

VERBATIM NOTES

OF

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

Held at the Jamaica Pegasus Hotel 81
Knutsford Boulevard, Kingston 5

On

TUESDAY APRIL 19, 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

Mr. Gavin Goffe- Attorney-at-Law

REPRESENTING MR PATRICK HYLTON

Mr Dave Garcia - Attorney-at-Law

GIVING EVIDENCE

Mr. Jeffrey Cobham

1 Tuesday April 19, 2011

2 Commencement 1:05 p.m.

3 COMM BOGLE: Good afternoon, Ladies and gentlemen.

4 This enquiry is now in session. And for

5 the records might we have the names of

6 the attorneys present.

7 MS. CLARKE: Good afternoon, Mr. Chairman. My name is

8 Judith Clarke, appearing on behalf of

9 the Commission.

10 MR. GARCIA: Dave Garcia, appearing on behalf of

11 Patrick Hylton.

12 MR. GOFFE: Gavin Goffe instructed by Myers Fletcher

13 and Gordon for Jamaican Redevelopment

14 Foundation.

15 COMM BOGLE: Thank you very much. This afternoon we

16 will be having a submission from

17 Mr. Jeffery Cobham. At this time I will

18 call Mr. Cobham to the stand.

19 MR. JEFFERY CALLED AND SWORN

20 Thank you very much Mr. Cobham. [In August,](#)

21 [2009 we wrote to you asking you to provide](#)

22 [us with certain information.](#) I'll read a copy

23 of that letter and then ask for your response

24 to the letter dated August 21, 2009 addressed

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Mr. Cobham.

**RE: Commission of Enquiry into the
Collapse of Financial Institutions in
Jamaica in the 1900's.**

We draw your attention to the terms of
reference of the Commission of Enquiry, a
copy of which is attached.

To facilitate the work of the Commission you
are hereby requested to make a written
submission to the Commission of Enquiry
stating the reasons leading to the failure of
National Commercial Bank of Jamaica Limited
and NCB Trust and Merchant Bank Limited. Your
submission should clearly outline the
management practices and the role of the
Board of Directors in the management of the
company. You may include any other
information that in your opinion may be of
assistance to the commissioners. Please be
advised that the Commission may call upon you
to appear before it at the public hearings.
You are further requested to provide to the
Commission, where you have retained

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copies of or have access to, the
information specified below.

And that information specified below
are:

Annual reports of the institution for the
years 1990 to the date operation ceased
or its operations fell under FINSAC.

A copy of the Memorandum and Articles of
Association or other documents of
incorporation of the institution and
amendments thereto from inception to
date.

A copy of each and every agreement and
amendment thereto between the
institution, FINSAC and or the
Government of Jamaica.

A complete list of all customers whose
debts were transferred to FINSAC. A
complete list of the interests
specifying the interests and other
charges applied to the obligations of
each debtor at the time the debt was
transferred to or fell under the
management of FINSAC.

1 A complete list of all amounts due from each
2 debtor and the underlying securities at the
3 time the debt was transferred to or fell
4 under the management of FINSAC.
5 copies of the minutes, summaries or other
6 compilation of the meetings of the Board of
7 Directors, the executives of the
8 institution, each committee of the board, and
9 each management committee from 1990 up to the
10 date the institution fell under the
11 management of FINSAC. Copies of minutes of
12 meetings with regulators, FINSAC, the
13 Ministry of Finance or other related
14 government agency.

15 The Commission anticipates your kind
16 assistance in providing the information
17 requested above by August 31, 2009. We have
18 not received any of those documents but you
19 are here this afternoon and therefore we
20 will ask you to make your presentation.

21 24 MR. COBHAM: Thank you,
22 Chairman. I think I should
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24 start by saying
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that essentially the

1 documents which I was requested to
2 provide are the property of the Bank.
3 As you can quite imagine, these are
4 voluminous, detailed, and I certainly
5 would not be in a position 13 years
6 after the fact to present these
7 documents. Nevertheless I do hope that
8 today I'll be able to cast some light on
9 what happened 13 years ago.

10 COMM BOGLE: Before you start, can you tell us how
11 long you worked with the bank and your
12 final position with the bank before you
13 left?

14 MR. COBHAM: I joined what was then Barclays in the
15 latter part of 1969 and I eventually
16 left National Commercial Bank as
17 Managing Director in 2000. I was the
18 Managing Director 1996 to 2000.

19 COMM BOGLE: Thank you. You may now proceed.

20 MR. COBHAM: Thank you. In 1994 the NCB group made a
21 profit before tax, an extraordinary item
22 of \$1.3 billion; in 1995 Group profit
23 fell to \$825 million. The following
24 year, the group made a loss of \$802
25 million.

1 Chairman, there is a table which sets out the
2 profit before tax and extraordinary items for
3 each of the companies comprised in the NCB
Group. I

5 don't know if the provision of the table
6 is enough or whether I should itemize.

7 COMM BOGLE: You can highlight the ones that you wish
8 to.

9 MR. COBHAM: By then, there were quite a number of
10 companies within the Group but the ones
11 I think are of particular importance and
12 relevance, in 1994 the bank which was
13 the largest of the subsidiaries had made
14 \$1.1 billion profit. In 1995 that fell
15 to 751; in 1996 it essentially broke
16 even, a tiny profit of 12 million.

17 The NCB Trust and Merchant in 1994 made
18 \$140 million profit; in 1995 \$185
19 million profit and in 1996 a loss of \$32
20 million.

21 The other significant company was NCB
22 Investments which made a loss in all
23 three years: a loss of \$21 million in
24 1994; a loss of \$149 million in 1995 and
25 a loss of \$657 million in 1996.

1 The group members essentially...

2 COMM BOGLE: Just a minute before you continue. I
3 don't know if you addressed this further
4 on but would you be able to give an
5 indication of why the magnitude of loss
6 in the NCB Investments?

7 A: Yes, I certainly can. The group members
8 in the main were National Commercial
9 Bank Limited which -- the transactions
10 were commercial banking operations. NCB
11 Trust and Merchant Bank and West Indies
12 Trust Limited - merchant banking; NCB
13 Investments Limited is partially as the
14 structure is, a money market operations,
15 direct investment in real estate, the
16 leasing of computer equipment; and then
17 NCB Investment Limited had a number of
18 subsidiaries and associates which
19 included NCB Hotels which was 100% owned
20 and was the operators of the Windham;
21 Pembroke Hotel Enterprises Limited (who
22 owed 66%) an investment in Hospitality
23 Inns of Jamaica, that is, Inn on the
24 Beach in Ocho Rios. Inn on the Beach
25 Development Limited is 50% owner and

1 operator of Club Jamaica in Ocho Rios and
2 Ciboney Hotel Developers Limited which had
3 a 20% ownership -- lease of Sandals Ocho Rios
4 to Hospitality Inns of Jamaica.
5 There was National Mutual Investments
6 Limited, formerly Mutual Finance Company
7 Limited which was set up to finance mainly
8 the Glen Abbey Limited Development in the
9 Norbrook area; it also undertook funds
10 management and corporate advisory services.
11 The Jamaica Orange Company Limited -
12 agriculture -- focused on the cultivation of
13 2,968 acres of citrus at Montpelier. NCB
14 Insurance Services Limited which provided
15 long term insurance through the product
16 called OMNI and which was 74% owned by the
17 NCB group; Edward Gayle and Company Limited
18 which undertook stockbroking and Securities
19 Trading was owned, 50.5% by the NCB Group.
20 Cherry Brook Limited and Glen Abbey Limited
21 - development and sale of 35 townhouses for
22 moneys.

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1 There were other companies such as Carp
2 Corporation Limited which dealt with
3 medical scheme administration; Mutual
4 Security Insurance Brokers Limited -
5 insurance broking.

6 There is some degree clear duplication,
7 largely because the Group had purchased
8 Mutual Security Bank and its
9 subsidiaries and we had not yet at this
10 stage ironed out some of the duplications
11 that occurred.

12 Now throughout the proceedings of this
13 FINSAC Commission, customers and bankers
14 have repeatedly and with considerable
15 feeling, spoken of the combination of
16 factors which affected business activity
17 during this period. I am not going to repeat
18 ad nauseam and therefore make but brief
19 mention of the prolonged wielding of a high
20 interest rate policy as a blunt instrument
21 rather than as a carefully applied scalpel,
22 to the point where the Bank of Jamaica was
23 offering in excess of 50% on its
24 instruments, and the resultant increase in
25 the cost of

1 funding and thereafter, the rates
2 charged to customers in an attempt to
3 maintain the bank's net interest margin. In
4 1994 National Commercial Bank's interest
5 margin was 15.5% and three years later,
6 1997, this declined to 12% as we were forced
7 to pay more and more deposits, while being
8 constrained in the level of rates we were
9 able to charge to customers. All of this was
10 taking place against a background of
11 comments, some of that comment from most
12 unfortunate sources, about the safety of
13 indigenous financial institutions, forcing
14 these institutions to pay an ever increasing
15 premium for deposits in a futile attempt to
16 take the flight to foreign owned
17 institutions. The foreign institutions
18 understandably were able to offer lower
19 rates for money and thus, lower rates to
20 borrowers. On the other hand, the pressure
21 on borrowers from the financial
22 institutions, some of whom were paying rates
23 in excess of 100% per annum, became, of
24 course, unsustainable,

1 leading to widespread business failures.
2 Simultaneously the Regulators were
3 introducing new mandatory loan provision
4 requirements. The banks generally accepted
5 the necessity for these improved regulations
6 but certainly I am aware that the indigenous
7 banks requested that they be phased in over
8 four years to enable the sector to adjust.
9 This request was rejected by the Bank of
10 Jamaica. The new
11 regulations also meant that the calculation
12 of required capital, the value of existing
13 security held could not be taken into account
14 in respect of non performing facilities. It
15 must also be borne in mind that the
16 background story of inflation was 80.2% in
17 1991, 40.2% in 1992; 30.1% in 1993; 26.9% in
18 1994, 25.5% in 1995 and 15.8% in 1996.
19 Eventually, in April, 1998, thirteen years
20 ago, FINSAC was approached and a Financial
21 Assistance Agreement was signed between
22 FINSAC and the bank. Now in addition to the
23 factors which
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1 affected the other indigenous institutions
2 - and here this is my considered opinion -
3 there were factors which were at work in
4 respect of the NCB group and which to a great
5 extent went to the root of the philosophy of
6 the organization.

7 In 1977 the Government of Jamaica purchased
8 all the shares of Barclays Bank of Jamaican
9 and National Commercial was born. To be
10 absolutely fair, the Government of the day,
11 made what must have been a tremendous effort
12 to keep its distance in the face of dire
13 temptation and not interfere in the policies
14 and practices of the bank, and if I may be
15 personal for a moment, the few forays were
16 stoutly and implacably thwarted by the
17 bank's then manager Donald Banks. However,
18 inevitably, the question was raised within
19 the political ranks and to be honest, within
20 the bank itself, as to the role of a powerful
21 financial Government owned flagship
22 institution. Should such an institution
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1 be indistinguishable from private financial
2 institutions whose sole aim was the
3 maximizing of profit? Was there not a duty
4 also, not merely to try to attempt to win a
5 larger piece of the economic pie from
6 competing
7 institutions, but also to increase the size
8 of that pie? After all, was not the
9 government merely a trustee for the real
10 shareholders of the bank, the people of
11 Jamaica? In the meantime, the bank was doing
12 well, becoming in 1983 the first bank
13 locally to hold in excess of one billion
14 dollars of deposits. Two years later, the
15 NCB Group Limited (a holding company) was
16 incorporated in order to reorganize the
17 structure of NCB and its subsidiaries. NCB
18 Group subsequently acquired all the issued
19 share capital of National Commercial Bank
20 and its subsidiaries, and in 1986 the
21 National Investment Bank of Jamaica sold
22 about half the Group shares to the public and
23 the NCB Group was listed on the Stock
24 Exchange.

1 During these years, the NCB Group was offered
2 the Jamaica Orange Company which it
3 purchased; it was offered the Wyndham Hotel,
4 which it purchased; it was also offered the
5 Liguanea lands, those lands opposite the
6 Pegasus, which it
7 purchased. These offers were made to NCB by
8 a cash strapped Government of Jamaica. So
9 Commissioners, you may make up your own minds
10 as to the level of persuasion which backed
11 the offers. It was also during this time that
12 - and I well recall this - that bankers in
13 other institution were being taken to task
14 by many politicians for being merely margin
15 gatherers and for not setting as their
16 objective the increase of Jamaica's economic
17 pie, and at that time NCB was held forth as
18 a shining example of this approach to
19 banking. However, in the three years, 1994
20 to 1996, NOB
21 Investment Limited, the Group subsidiary
22 which owned the Wyndham and the Liguanea
23 lands purchased from government, lost \$827
24 million. In those same three

1 years, the Jamaica Orange Company,
2 purchased from government, lost a
3 further \$127 million.

4 Frankly, I think that we were bankers, we
5 ventured into areas in which we did not have
6 enough expertise and proper expertise. In
7 the case of the orange company, perhaps it is
8 a little bit more understandable since
9 initially we were partnered by a gentleman
10 called Skip Testolini (?) From the United
11 States who was an expert in the area of
12 oranges. Unfortunately he was killed in an
13 accident and the NCB Group then purchased the
14 shares from his widow. In addition there are
15 certain areas of the economy, which no matter
16 how badly they are doing financially, many
17 believe must still be supported because of
18 social impact of withdrawing such
19 support. The Sugar industry is one such
20 obvious example. I submit, sir, that the
21 urgency with which Government sought to put
22 in place measures to rehabilitate the Sugar
23 Industry is to some extent
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1 dependent on their perception of the ability
2 of the entity which is financing the industry
3 to continue to pay the cheque, the entity
4 being ever mindful and being made ever
5 mindful of the social consequence of
6 refusing to pay. NCB was faced with this
7 dilemma at the height of its crisis.

8 In 1992, against the advice of the NCB
9 Group, the National Investment Bank of
10 Jamaica sold its remaining 23.4 million
11 (39%) NCB shares to Jamaica M\$N Investments
12 Limited, a company then jointly owned by
13 Jamaica Mutual Life Assurance Society and
14 Jamaica National Building Society, and
15 which shortly thereafter became wholly
16 owned by Jamaica Mutual Life. As the rumours
17 about the Jamaica Mutual's state of
18 financial health became more and more
19 negative shortly thereafter, policy
20 holders' encashment demands reached fever
21 pitch. Once again the dilemma facing NCB as
22 bankers and the Jamaica Mutual Society, was
23 the extent to which
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1 2 such demands could be accommodated against
3 the background of certainty that dishonoured
4 cheques would precipitate a full run on the
5 insurance company. I pause here to make a
6 comment on the whole question of related
7 party transaction.

8 A company which has on the Board of the Bank
9 several seats and which is in the
10 unfortunate position that Jamaica Mutual
11 found itself, I think it is a testimony as
12 to why the related party transaction rules
13 must be adhered to.

14 It can be seen then that the ownership by
15 government of the NCB Group presented a
16 number of survival challenges to the Group
17 which did not have to be
18 considered by the other indigenous
19 institutions.

20 To quote from an article entitled
21 **Governments Ownership of Banks** first
22 published in February, 2002 Journal of
23 Finance by three persons - La Porta,
24 Lope-de-Silanes and Scleifer:
25 **The data show that such ownership is**

1 **large and pervasive and higher in**
2 **countries with low levels of per capita**
3 **income, backward financial systems,**
4 **interventionist and inefficient**
5 **governments, and poor protection of**
6 **property rights ..**

7 This evidence supports "political"
8 theories of effects of government
9 ownership of firms. Jamaica's
10 experiment with government ownership of
11 a commercial bank has tended sir, to
12 support this view.

13 COMM BOGLE: That completes your submission?

14 MR. COBHAM: That completes, sir, my written
15 submission.

16 COMM. ROSS: Mr. Cobham, could you just clarify for
17 us whether you were the Managing
18 Director of the NCB Group or of the
19 bank.

20 A: Of the bank. Deputy Managing Director of
21 the Group, Mr. Dunbar McFarlane was
22 Managing Director of the Group and
23 continued to be after I left the
24 institution.

25 COMM. ROSS: Could you explain on page 7 what exactly

1 you meant in your reference to Sugar
2 Industry. Was that another industry to
3 which NCB was exposed or connected?

4 A: Yes, we carried the liabilities
5 basically for the Sugar Industry which
6 grew like Topsy over the years. There
7 were constant references to a work-out,
8 to a rescue package; government
9 acknowledged that something had to be
10 done but the fact of the matter is that
11 we were placed in a position where and
12 perhaps we should have, and this again
13 well, hindsight, perhaps we should have
14 bounced the cheques. We didn't because
15 - and this also applied in the case of
16 Jamaica Mutual, there were constant
17 reminders of the impact, the house of
18 cards sort of impact of taking this
19 risk, but yes we supported the Sugar
20 Industry totally.

21 COMM ROSS: So there were clients of yours who
22 maintained accounts at the bank which I
23 think were handed over to them?

24 A: Yes, and the Sugar Industry of Jamaica
25 essentially, yes.

1 looking back at your customers, what was
2 the main thing that drove the level of
3 delinquency and what if anything did the
4 bank do in order to try and reduce,
5 stave off or slow down the rate of those
6 delinquencies in the bank?

7 A: I have to admit that in earlier years we
8 were perhaps guilty of what is known in
9 the trade as, or what the Bank of
10 Jamaica certainly considered as
11 "evergreening", which basically was like
12 if you had liabilities on your books, it
13 wasn't being repaid and serviced
14 according to arrangements, then you met
15 with the customer and essentially you
16 made other arrangements which seemed to
17 fit in his cashflow. This was frowned
18 upon by the Bank of Jamaica, it was
19 considered, the term "evergreening", and
20 in such cases we no longer had that
21 latitude. Now, as I mentioned as well,
22 and part of the reason for the fall in
23 profitability was that our margins were
24 being squeezed. The Bank of Jamaica was
25 offering rates in excess of 50% for most

1 of this time. There was this
2 competition. It was this growing
3 uncertainty about the future of
4 indigenous banks generally and all of
5 these translated into margins which
6 decreased almost every month.

7 Indigenous banks had to pay more for every
8 dollar of deposits and that skyrocketed and
9 at the other end you had to be aware that there
10 was a point where for your customers'
11 interest, rates became a number, simply a
12 number and when it reaches that stage then
13 the tendency is I think, in many cases, to
14 ignore it. We had customers who--there was
15 that phenomenon which was known as "bringing
16 in the keys", that is, the customers who
17 simply came in and said well, look, there is
18 no way my business can pay 80% or 90% or
19 whatever so here are the keys. And we then
20 had to be taking the decision as to whether
21 we should send a receiver in or take another
22 action to dispose of the security.
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1 us in the adoption of the much more
2 rigorous standards which were to become
3 the norm in later years. So to that
4 extent I think certainly we were to be
5 blamed.

6 COMM BOGLE: As one of the indigenous banks,
7 recognising that the interest rates were
8 continuing and after you would have
9 hoped that they would have stopped let's
10 say six months to a year, what did the
11 Bankers Association or NCB did for that
12 matter? Did you meet with the Bank of
13 Jamaica or the regulatory...

14 A: Several times. In fact there were so
15 many suggestions when we met, certainly
16 I personally, and this was before or
17 just before -- yes, just before I became
18 Managing Director and so therefore it
19 perhaps was not in my purview to do so.
20 But I certainly met with the then
21 Minister of Finance and pointed out --I
22 remember vividly at that time I had
23 worked the figures out and we said we
24 needed five billion dollars of capital,
25 at that point and the reaction was

1 absolute horror, so there were signs.

2 COMM BOGLE: What I meant was, did you or the Bankers
3 Association ever meet with, for
4 instance, Bank of Jamaica and explained
5 to the them?

6 A: Both Bank of Jamaica and yes, the
7 Minister of Finance, and explained also
8 as I mentioned earlier -- we accepted
9 that the regulatory environment had to
10 change for all sorts of reasons in the
11 sense that if Jamaica was to become
12 attractive to investors abroad, then the
13 regulatory framework which operated in
14 the financial sector had to be on par
15 with that which operated in the more
16 developed capitals. The thing is, what
17 we tried to do was to ask for a more
18 gradual introduction of these measures,
19 set a target for full implementation --
20 our suggestion was four years, we said
21 we could live with three. But this was
22 simply not happening, one day the
23 regulations were 'x' and the next day
24 they were So we had no choice but
25 to live with this. But, yes

1 representations were made and I think,
2 if I remember, listening to, sitting in
3 this Chair, Mr. Elon Beckford, I think
4 he did give a number of examples where
5 the indigenous banks met with and made
6 pleas which fell on deaf ears.

7 COMM ROSS: Mr. Cobham, could you explain a little
8 bit more the reasons behind the
9 accommodation from FINSAC, I am
10 gathering that the banks faced both
11 insolvency -- well, certainly they seem
12 to faced insolvency...

13 A: And recapitalization.

14 COMM ROSS: As a result of the loan loss, was there
15 also a liquidity issue at the bank?

16 A: To a lesser extent, but, yes, there was
17 an increasing liquidity problem which as
18 it certainly grew, rumours grew that we
19 were losing deposits at quite a
20 considerable rate and it became a
21 liquidity crisis, we had to be dependent
22 on the Bank of Jamaica on very few
23 occasions to be honest. So it didn't
24 really sort of reach the state of
25 absolute crisis but yes, there was a

1 liquidity problem. But the main thing
2 was that of our portfolio of maybe 22,
3 \$23 billion of loans, some 13 billion
4 were deemed and considered
5 non-performing, so that was one. The
6 sale of those loans to FINSAC was one
7 aspect and then of course, the
8 recapitalization of the bank was the
9 other leg and that was to the tune of
10 about five-and-a-half billion dollars.

11 COMM ROSS: Could you explain or maybe tell us a
12 little bit about what the bank did to
13 try and realise its security on some of
14 those debts?

15 A: Well, interestingly even after those
16 debts were sold there was an arrangement
17 whereby the bank continued on behalf of
18 FINSAC on a no fee basis as a -- we
19 formed a Debt Collection Unit and in
20 fact, collected quite a bit of the debt
21 which was just at that stage turned over
22 to FINSAC. No fee basis but it was part
23 of the Agreement. So it wasn't a
24 question of selling the debt and
25 stepping back and sort of saying

1 different things, we had to actively
2 pursue those debtors.

3 COMM ROSS: Can you explain to us what happened to
4 that program because from what we heard
5 so far a substantial portion of the
6 debt which was taken from NCB by FINSAC
7 ended up with the Jamaican Redevelopment
8 Foundation, is that correct?

9 A: Yes, a substantial portion. I wouldn't
10 hazard a guess at this stage to try to
11 recall what amount went to Jamaican
12 Redevelopment but yes, quite a bit did.
13 But we also made quite considerable
14 collections, fee freed. This sort of
15 banker/customer in-away relationship, I
16 think, freed the Debt Collection Unit to
17 go after collections more aggressively.
18 Perhaps we should have been doing that
19 earlier.

20 COMM BOGLE: You didn't seem to address the point of
21 what became of that programme, why did
22 that programme stop where you would

23 collect on behalf of FINSAC. Why did it
24 stop? If it did stop, why did it stop? Well,
25 A: obviously, in the nature of debt

1 collection, as you get down to the sort
2 of hard core securities that are more
3 difficult to sell, these tend to sort of
4 form a hard basic core to the extent
5 that NCB, even as a collection agent,
6 was not able to "make deals", that is,
7 if the property was valued at 'x' the
8 extent at which the Collection Unit
9 could say well, we are prepared to
10 accept 'y' instead was very limited, and
11 I think that was passed onto FINSAC and
12 Jamaican Redevelopment which in the end
13 made some very considered compromises.
14 So I think the program lasted for as
15 long as we could make meaningful
16 collections.

17 COMM ROSS: Mr. Cobham, can you recall what portion
18 of the debt was owed by government
19 institutions?

20 A: No.

21 Q: And what portion by the private sector?

22 A: No.

23 Q: Maybe?

24 A: No, offhand I cannot recall that, it's
25 over a decade. But what I do know is

1 that -- I know that after the sale of the
2 remaining shares to -- well, shortly after it
3 became Jamaica Mutual, still Jamaica M&M, I
4 do know that from that point of view, and here
5 again, the question of related parties, I
6 think that debt increased somewhere in the
7 vicinity of \$3.6 to 3.7 billion. Certainly,
8 it was the largest on our books at the time.
9 As far as the government owned debt is
10 concerned, I would not say it was
11 substantial. I think the largest single
12 entity would have been the Sugar Company of
13 Jamaica, the figures I am not able to recall
14 at this moment. My reference to government
15 involvement to be candid, rather tended to
16 point out that a number of the entities which
17 the group purchased and attempted not very
18 successfully to run and which wrapped up very
19 considerably losses were purchased -- well
20 let me say, let me restrict myself to say,
21 were purchased from government without no
22 further comments.
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1 government paper for the debt?

2 A: That is my recall, certainly that was
3 discussed ad-nauseam, yes, because it
4 was not considered the best of solutions
5 to have the sugar debt go to FINSAC.
6 COMM BOGLE: So the government tied that off? The

7 other matter here now is the -- on a
8 number of occasions you mentioned the
9 fact that the institutions or NCB Group
10 purchased various -- well especially
11 NCB investments, purchased a number of
12 institutions and organizations from
13 government. Did NCB have a choice
14 deciding whether or not they should
15 purchase these?

16 A: Commissioner you -- my answer would have
17 to be, yes. Yes, in the sense that the
18 NCB Group could have dug its heels in
19 and said, we are not going to. The
20 truth of the matter is, that we felt,
21 and this goes back I think to the almost
22 sort of philosophical consideration of
23 what a wholly owned and later partially
24 owned government institution, the size
25 of NCB, what and where did its duty lie.

1 We felt that certainly the major clients
2 of the economy going forward had to be
3 tourism and agriculture. Our error was
4 in feeling that it was really robust, I
5 guess, we felt that we, up to that
6 stage, had been successful in running
7 the bank, we were doing well, for years
8 we had been sort of second running to
9 the other large commercial banks, and
10 suddenly we were overtaking them in a
11 number of areas and we felt that we were
12 able to bring the same level of
13 management to industries which frankly
14 we knew nothing about. Your question
15 was whether we could have said no? And
16 the answer is yes, we could have said I
17 think, if we were able to say it with
18 enough conviction, we could have said
19 no. I do not think we made the decision
20 because at that stage we felt that we
21 were able to manage these entities and
22 experience proved us certainly wrong.

23 COMM BOGLE: So it was not pressure from your owners
24 but rather that management felt that
25 they had the expertise to actually

1 purchase these and successfully run the
2 organization?

3 A: I think I will answer that with a
4 simple, yes.

5 COMM BOGLE: So therefore, one could then say that
6 one of the major drawbacks, if I may use
7 that term, of the NCB's woes was
8 therefore NCB Investments and the
9 Jamaica Orange Company in that
10 management took on what management could
11 not manage?

12 A: Yes. As I mentioned in the case with
13 the Orange Company, I think in that area
14 we did recognise that the agricultural
15 expertise had to come from the United
16 States partner. Unfortunately, that was
17 not the case; we did seek other partners
18 after the death of this gentleman but in
19 the end we decided to take it on
20 ourselves and we were very unsuccessful.
21 Farming is an area that we learned, to
22 our cost, it doesn't really -- the
23 figures are important but the figures
24 come after the management of the
25 enterprise and the management of the

1 farming enterprise, I am sorry, does not
2 fall within the purview of people who
3 have been reared sitting behind a desk
4 in analyzing figures.

5 COMM BOGLE: A number of persons have come before
6 this Commission who were in the
7 construction industry and they had
8 fallen into difficulties. I note here
9 that Cherry Brook and Glen Abbey in 1996
10 was showing a loss of \$67 billion
11 dollars and I see where it's development
12 and sale of townhouses. What would you
13 say would have been the major cause of
14 such a major lost in the development?

15 A: Basically it was run-away construction
16 cost. This was a company which we gained
17 ownership of when we purchased Mutual
18 Security Bank. It was already in
19 existence and we found that the units
20 that were left on the books to be sold
21 certainly could not cover the
22 outstanding liabilities. In fact I am
23 looking at some figures here. The
24 activities of Cherry Brook and Glen
25 Abbey relates solely to the development

1 and subsequent sale of 35 townhouses in
2 Kingston and up to the 31st of
3 March 1997 the Group had recorded
4 cumulative losses of 78.8 million in
5 relation to the project although as at
6 31st of March 1997 only one townhouse
7 remained unsold valued at 12.5 million.
8 So essentially the cost of construction
9 had outrun what we were able to sell
10 for.

11 COMM BOGLE: And you said that this was not the doing
12 this time of NCB?

13 A: Well, we inherited it.

14 COMM BOGLE: But that it was just one inheritance?

15 A: Yes, it came with the package.

16 COMM ROSS: I would just like to go back to the
17 issue of the debt collection one moment,
18 Mr. Cobham. I don't know if you recall
19 but given the pace at which NCB was
20 recovering bad loans on behalf of
21 FINSAC, can you hazard a guess as to how
22 long it would have taken to liquidate
23 that portfolio?

24 A: Had it remained in...

25 COMM ROSS: Yes, had it remained with NCB.

1 A: At the time and at the outset of course,
2 the Jamaican Redevelopment entered the
3 picture. At the time we thought with a
4 diminishing annual figure -- well, we
5 thought that within four years we could
6 have cleared up most of that debt,
7 bearing in mind of course, that when the
8 debt was sold it would not have
9 benefited NCB in the sense of being able
10 to reverse the provisions when it was
11 sold but we did feel that within four
12 years we should have more than broken
13 the back on that.

14 COMM. ROSS: Was any sort of work-out programme ever
15 discussed with the Ministry of Finance?
16 In other words, was there an alternative
17 proposal to a sort of FINSAC
18 arrangement?

19 A: No, there were long and hard discussions
20 with FINSAC because we recognize that
21 this was the entity which had been put
22 in place to deal with the particular
23 problems being faced by the banks. We
24 felt that a breathing space was needed.
25 We felt that we had to be

1 re-capitalized. We felt that the drag
2 of the non-performing loans which was
3 very considerable had to be taken off
4 the books of the bank and so, no, we
5 really saw FINSAC as the vehicle by
6 which this would have been done. To
7 have tried to have done otherwise,
8 because remember the loans were replaced
9 by Government papers, so that in terms
10 also of what we got in terms of papers
11 in exchange for loans and in terms of
12 the capital, that then strengthened the
13 bank considerably, but we didn't feel
14 that this was possible once that drag of
15 thirteen odd billion, fourteen odd
16 billion dollars of bad debts remained on
17 the books of the bank.

18 COMM. ROSS: You mentioned getting Government papers,
19 but it wasn't actually Government
20 securities that NCB received initially
21 or was it the FINSAC bonds as we heard?

22 A: FINSAC bonds.

23 Q: These instruments didn't actually pay
24 interest in cash, did they?

25 A: No.

1 Now, I can assure you that there was
2 never any such occurrence within NCB. I
3 think that such examples of malfeasance,
4 of - I perhaps even go so far as to say
5 dishonesty which might have been
6 discovered in some institutions, again I
7 state very categorically that there was
8 none of this, and believe you me, sir,
9 every rock was turned over, every book
10 was opened and read five times and it is
11 certainly one of my perhaps enduring
12 sources of comfort, that nothing of that
13 nature was ever found. So if a treatment
14 was different it wasn't because of any
15 sort of favorable treatment, it was
16 simply because different treatment was
17 warranted.

18 COMM. BOGLE: Okay, questions from the attorneys
19 present.

20 CROSS-EXAMINATION BY MISS JUDITH CLARKE

21 MISS CLARKE: On behalf of this Commission I would
22 like to put a few questions to
23 Mr. Cobham just by way of clarification
24 particularly for the benefit of....

25 A: I am sorry.

1 MISS CLARKE: My name is Judith Clarke and I am
2 appearing for the Commission. I would
3 like to put a few questions to you and I
4 was saying particularly for the benefit
5 of perhaps of some persons, some
6 affected persons who have appeared
7 before this Commission and whose
8 approach had its genesis in their
9 dealings with NCB.

10 MR. GOFFE: Mr. Commissioner, if I could interrupt
11 my friend's comment. This issue was
12 bound to arise some time...

13 A: I am sorry I don't know what the issue
14 is but I will listen.

15 COMM. BOGLE: This has nothing to do with you this
16 time.

17 MR. GOFFE: This issue was bound to arise some time
18 and now is good a time to address you.
19 My friend is counsel for the Commission,
20 counsel for the Commission with a
21 particular responsibility which is
22 marshalling the evidence. Now, as I
23 understand it, the role of the counsel
24 to the Commission who is marshalling the
25 evidence does not include representing

1 the interests of anybody else besides the
2 Commission. Miss Clarke is not the attorney
3 for any of the debtors or anybody else who
4 has come before this Commission and I think
5 that insofar as she's an attorney for the
6 Commission and therefore an agent of the
7 Commission, questions of whether an attorney
8 for the Commission can take on the interests
9 of other persons without having those
10 interests also coming across as the
11 Commission's interests is in question. So I
12 say Mr. Chairman that if the Commission is
13 satisfied or has
14 particular questions or issues as it relates
15 to other persons who are not here, then I
16 would ask that those issues be determined by
17 the Commission itself but it's a general
18 comment, certainly a general objection, and
19 we would be objecting to counsel for the
20 Commission adopting the role of
21 cross-examining the witness as we understood
22 that that right is only afforded to attorneys
23 whose clients are affected. That certainly
24 is

1 the rule as it relates to us and when we
2 have tried to ask questions of any
3 witness, the response has been, how does
4 their evidence affect your client and I
5 would say respectfully, Mr. Chairman,
6 that if that is the position which we
7 have to face, then I think it must
8 equally applies and moreso for counsel
9 to the Commission.

10 MISS CLARKE:

11 If it pleases you Mr. Chairman, may I
12 respond. I respond firstly by speaking
13 to a certain irony on the part of
14 counsel who raised the objection in that
15 if counsel in his capacity as attorney
16 for JRF has no standing or will not be
17 impacted in any way by the questions
18 being put, then perhaps he has no basis
19 on which to respond having regard to the
20 fact that he is attorney for the JRF.
21 That aside, I believe that there have
22 been instances where I have appeared and
23 I have made it clear in some of those
24 instances that I am here in that
25 instance to marshal the evidence on
behalf of the Commission for certain

1 affected persons. I will say very carefully,
2 I am not certain as to whether counsel who
3 was presently on his feet has been briefed
4 as to the limits of my appearance before this
5 Commission on behalf of the Commission. I
6 have appeared to marshal evidence on behalf
7 of the Commission.

8 Now, to the meat of the matter, sir; to the
9 extent that I have appeared on behalf of the
10 Commission to marshal the evidence on behalf
11 of these affected persons, I believe that it
12 is for the Commission's benefit that if
13 there are concerns raised by these affected
14 persons before the Commission, it is in the
15 Commission's interest that they be assisted
16 in articulating their concerns, so in that
17 I appear on behalf of the Commission, in that
18 I am simply
19 assisting the process in advancing some of
20 the concerns which some of these persons
21 would want to have put before the Commission
22 when a witness has appeared and they would
23 want to be heard
24
25

1 further before the Commission. So it is an
2 accommodation which I believe my
3 representation affords because if the
4 Commission has asked me to marshal the
5 evidence on behalf of these witnesses and to,
6 as it were, advance not only their concerns
7 in chief but their questions as it relates
8 to any
9 particular aspect of evidence subsequently
10 given, I believe it can only advance the
11 process. Clearly if any of these persons who
12 have marshaled the evidence through present
13 counsel who is now speaking would want to ask
14 a question of a witness, how else would they
15 be able to put their questions? So I believe,
16 you know, the hybrid nature of my appearance
17 if you will, ought not to undermine the
18 interest of any of the stakeholders here, be
19 it the Commission, the Commissioners, or any
20 of the
21 affected persons who would want to have
22 certain matters aired and I believe it is
23 in the Commission's interest if the
24 affected persons want to be heard

1 further through me in terms of questions
2 put to a witness who is in the stand.

3 MR. GOFFE: Mr. Commissioner, before you rule if I
4 could make one additional comment in
5 relation to my friend's last question as
6 to who should do it. There was another
7 Commission of Enquiry held elsewhere and
8 the practice adopted by that Commission
9 I was told was to set aside specific
10 funding for persons who were appearing
11 to be represented for that purpose and
12 that is something which other
13 commissions of enquiry have also done so
14 that it is clear that even if it is the
15 same attorney-at-law who happens to be
16 doing it, it wasn't always the case, but
17 even if it is the same attorney-at-law,
18 they enter into their own arrangement
19 where I am your attorney even though I
20 am being paid by somebody else perhaps,
21 but that process allowed the attorney to
22 be in the position which my friend now
23 wishes to be in, it seems, which is that
24 attorney for that particular person was
25 their lawyer, they were no longer the

1 Commission's lawyer in respect of that
2 person. Now, of course, that has not
3 yet happened here, I don't know what the
4 Commission's plans are but certainly as
5 it relates to the procedure, we have not
6 been advised of what is the extent of
7 the role to be played by counsel to the
8 Commission is and perhaps this is good a
9 time as any for that clarity to be
10 sought.

11 MISS CLARKE: Counsel could explain his objection in
12 light of his representation of JRF?

13 HER LADYSHIP: Any of the other two counsel wish to say
14 anything on this matter?

15 MISS CLARKE: It would be the other attorney, I
16 believe that JRF has spoken.

17 COMM. BOGLE: JRF would have spoken, I am sorry.
18 Mr. Garcia.

19 MR. GARCIA: Well, not too much though Commissioner.
20 I think it would assist certainly me and
21 perhaps others if there could be some
22 clarification as to exactly what is the
23 role of the officer marshalling the
24 evidence on behalf of the Commission. I
25 confess that at an earlier stage in the

1 proceedings I felt that I was clear but
2 I do not feel that I am similarly clear
3 at this point.

4 COMM. BOGLE: The consensus of the Commission,
5 questions will be allowed by Miss
6 Clarke.

7 MISS CLARKE: Thank you very much Mr. Chairman.
8 Mr. Cobham in the course of your
9 submission you, I believe it was
10 somewhere when you reached about page
11 five, you used the expression which I
12 believe persons would want to have
13 clarified. You said FINSAC was
14 approached; now my question to you is
15 basically to explain what was the
16 genesis of the relationship between NCB
17 and FINSAC?

18 A: well, as I said earlier we acknowledged
19 that the sole purpose for the creation
20 of FINSAC was to facilitate the work-out
21 of the difficulties which a number of
22 financial institutions found themselves,
23 including the insurance companies and so
24 on. We recognize our own problems and
25 the records will show that we, as the

1 group, approached FINSAC via the
2 Government and asked for a meeting with
3 them and that was really the genesis of
4 the relationship.

5 Q: So it was not the case where FINSAC
6 intervened as it were, it was as it were
7 on an invitation from NCB?

8 A: Yes. I don't know if in the final
9 analysis it matters, but yes.

10 Q: Thank you very much. Could you -- by
11 the way Mr. Cobham, were you able to
12 satisfy any of the requests made
13 relative to the provision of data in the
14 letter that was addressed to you from
15 this Commission dated August 21 2009 and
16 certain data were requested of you,
17 annual reports, copy of Memorandum,
18 Articles of Association, agreements,
19 that list of items, were you in a
20 position to provide those?

21 A: I am afraid I was not.

22 Q: I am trying to be sure. Based on your
23 recall, Mr. Cobham, what was the broad
24 objective and/or if it was more than
25 one, what were the broad objectives to

1 be achieved by the relationship with
2 FINSAC at the time when NCB formed this
3 relationship, when FINSAC was invited to
4 involve itself, I am strenuously
5 avoiding words like take-over, based on
6 your answer prior, when the relationship
7 between FINSAC and NCB was formed, what
8 was the broad objective to be achieved?

9 A: The broad objective was to replace the
10 identified non-performing loans with an
11 asset which would basically relieve the
12 drag on the profitability of the bank
13 which ..

14 Q: With a view to what ultimately?

15 A: With a view to giving the organization
16 some breathing room to start to put on
17 the books again live loans and thereby
18 increase the profitability of the
19 organization.

20 Q: And this four year period that you
21 mentioned, was it a period or a term
22 that was canvassed and agreed or
23 understood between the parties at the
24 very outset?

25 A: No, it was a suggestion by NCB.

1 Q: But it was never expressly accepted by
2 FINSAC?

3 A: No.

4 Q: I can only ask, based on your
5 recollection, because I appreciate you
6 don't have the data and it has been some
7 time, based on your recollection, in
8 your dealings or on your approach to
9 FINSAC, was there any particular
10 provision relative to how the borrowers,
11 NCB debtors were to be dealt with and in
12 particular as it relates to the interest
13 charges?

14 A: No, from time to time, there were
15 meetings and there were lots of those in
16 which, based on the fact that these were
17 customers or former customers of the
18 bank, the fact that we had established
19 over many years a basis of knowledge of
20 the affairs of the customers, there were
21 meetings in which there was a discussion
22 or advice was sought on how best it
23 might be to proceed in terms of X or Y.
24 So yes there was some collaboration in
25 this respect.

1 my opinion and I state this for the
2 records, it is my opinion, that a number
3 of businesses could have been given a
4 better chance of recovering by a greater
5 reduction in the interest that was being
6 charged.

7 Q: Just one last question, could you
8 explain to us in some detail the process
9 where by these individual accounts and
10 in particular the accounts of the
11 debtors was collated and transferred or
12 transported to FINSAC, how were these
13 accounts collated, brought together,
14 computed, preparatory to the hand-over
15 to FINSAC when FINSAC took over the
16 management of NCB?

17 A: Well, our anxiety as a bank was to clean
18 the books so basically all
19 non-performing loans at that stage were
20 transferred to FINSAC. Now, there may
21 have been one or two marginal ones and
22 there were arguments back and forth as
23 to whether or not they should be
24 included but basically the books of the
25 bank were cleaned and once the loan fell

1 into a non-performing category, then it
2 was transferred to FINSAC, it was bought
3 by FINSAC I had better say.

4 Q: And that transfer would have involved
5 what, just a handing over of documents,
6 was there a knitting process or did you
7 just take the records up and pass them
8 over?

9 A: To some extent we did. Because of the
10 arrangement whereby we formed this debt
11 collection agency, I better call it, of
12 course there was a lot of photocopying
13 going on and we did keep shadow files
14 but essentially, the original records
15 and the original securities and so on
16 were passed to FINSAC.

17 MISS CLARKE: Thank you very much, sir.

18 A: You are very welcome madam.

19 COMM. ROSS: Mr. Cobham, just want to ask a couple of
20 questions about the interest accrual on
21 bad loans, non-performing loans. When
22 were the banks required to stop accruing
23 interest on non-performing loans?

24 A: What had been the case before was that
25 it was a matter largely of judgment.

1 After the sort of change in the
2 regulation, then the moment -- well the
3 categories became substandard which was
4 anything that fell past due by ninety to
5 one hundred and seventy-nine days and at
6 that stage we were required to make
7 twenty percent provision. And then the
8 next category was doubtful where it
9 became one hundred and eighty to three
10 hundred and sixty-four days past due and
11 you were required to make fifty percent
12 provision. And then loss which is three
13 hundred and sixty-five days past due and
14 you were required to make one hundred
15 percent provision and you stopped taking
16 any profit, any accrual of interest into
17 profit at that stage.

18 COMM. ROSS: Would this be essentially after a year?

19 A: Yes.

20 COMM. ROSS: Now, just one other question. Your
21 description of non-performing loans, the
22 non-performing loans which were
23 transferred to FINSAC, which of these
24 categories would they have fallen into?

25 A: Well, the honest fact is that certainly

1 the majority of them would have fallen
2 into the 365-day - let me explain. It is
3 not that it had to be 365 days without
4 repayment, but could it have been a
5 gradual decline simply, for instance, if
6 installments were being short paid over
7 a number of months, a number of years,
8 that the total shortfall would have been
9 365 days worth. So those were the sort
10 of first batch, but I would admit that
11 there were a number of loans which were
12 heading in that direction which had not
13 fully made the 65-day barrier which were
14 also transferred. So, it was a sort of
15 automatic transfer of those and then we
16 took an informed look at the ones that
17 were on the way to full clarification.
18 The idea yes, was to sort of clean the
19 books.

20 COMM. ROSS: One other question, with regard to the
21 bank's practice of resolving bad debts
22 it had on its book. Would some
23 compromise be made with regard to the
24 interest portion of the debt in
25 resolving the loans?

1 A: This is before?

2 COMM. ROSS: Yes.

3 A: Oh yes.

4 COMM. ROSS: If you had a bad loan on your books and
5 you wanted to liquidate it, would some
6 compromise be made with regard to the
7 accrued interest not paid at the point
8 in time?

9 A: Yes. Normally, such a compromise though
10 would be made as part of a total pay out
11 of the debt. In other words, whereas we
12 did have request for "the writing off of
13 part of the interest", but with the
14 added request that we continue to carry
15 the loan, this did not happen. If a
16 person, a customer, was able to come to
17 the bank and the proposal is, I owe you, ix'
18 of which 40% is accrued interest will you
19 allow me to pay 'y'? Write off substantially,
20 let's say 90% of that interest, then it would
21 make sense to do so. Because that interest by
22 that time was not being taken into profit so
23 it wouldn't be reversing the profit; it was
24 being put into an accrual account. So it

1 was really a paper entry.

2 COMM BOGLE: Okay. Any attorney wishing to ask
3 questions.

4 MR. GARCIA: I don't have any questions sir, but it
5 is occurring to me, as I am hearing
6 Mr. Cobham's comments, I don't know
7 whether the Commission has a copy of the
8 Bank of Jamaica's Regulation concerning
9 bad debts and it occurred to me that
10 perhaps it would be of some assistance
11 if the Commission were to obtain a copy
12 of that.

13 COMM BOGLE: Thank you.

14 EXAMINATION BY MR. GOFFE

15 MR. GOFFE: Good afternoon, Mr. Cobham.

16 A: Yes, sir.

17 Q: I remind you I am Gavin Gaffe and I am
18 representing Jamaican Redevelopment
19 Foundation.

20 I have some questions related to just
21 the evidence which you have given to
22 this Commission today. I am not going to
23 be trying to go outside of those four
24 corners.

25 A: I hear you, sir. I just would remind you

1 that the Jamaican Redevelopment
2 Foundation was a creature which came
3 into being afterwards, so to that
4 extent.

5 Q: That is right. Could you just confirm
6 for me please, Mr. Cobham, when you say
7 banks were required to stop accruing
8 interest on non-performing loans, that
9 does not mean the banks were not
10 charging the customers interests on
11 their accounts?

12 A: The interest is being charged to the
13 customer but instead of it being
14 included in the profit of the bank, it
15 was credited to an accrual account.

16 Q: You had spoken about when you get down
17 to hard core accounts, what do you
18 consider when you refer to, use the
19 phrase 'hard core accounts', what were
20 you referring to, what types of accounts
21 were you referring to?

22 A: Z would say where the recent history had
23 evidenced an inability to meet whatever
24 the structured obligations were and
25 where there was no prospect of this

1 situation changing, there were other
2 situations where perhaps there was a
3 sale of property or the introduction of
4 funds or perhaps an arrangement with a
5 new partner or something where you could
6 see an improvement in the situation, but
7 'hard core' as far as I am concerned, is
8 where there is no immediate prospect of
9 being repaid.

10 Q: You are not saying that you thought that
11 NCB could have cleared up the hard core
12 debts within four years? You had said
13 that you could have broken the back of
14 it.

15 A: Yes, broken the back.

16 Q: Are you including those hard core debts
17 when you say you could have cleared
18 those off or cleared off most of them?

19 A: Well broken the back, I certainly would
20 never claim or even contemplate fully
21 clearing the debts but the relationship
22 which exists between a debt collection
23 agency and a debtor is rather different
24 from that which obtains between a banker
25 and a customer. The rules change and

1 really work out and the process was a little
2 tedious because the ability of the debt
3 collecting agencies to accept
4
5 x' instead of 'y' in retiring of the
6 debt was always subject to FINSAC.

6 Q: And you said 'x' instead of 'y' is a
7 compromise settlement?

8 A: That's right.

9 Q: And would you agree that you would need
10 to have that ability to compromise the
11 debt to be able to effectively
12 administer a non-performing portfolio?

13 A: It certainly would have helped the
14 effect of this. When you sit across a
15 debtor you may reach a point, in many
16 cases it comes down to haggling and you
17 strike a bargain, it always weakens your
18 case when you then have to say, all
19 right, I'll get back to you shortly.
20 Sometimes to be quite honest, that
21 surely took a hell of a long time
22 because first you had to sort of, in
23 many cases, go to FINSAC and then you
24 had to sort of persuade them towards
25 your view of accepting and making the

1 compromise and by then the sort of heat
2 of the moment is lost, the game has gone
3 cold, you almost have to start the
4 negotiations again.

5 Q: Now that process you were speaking
6 about, the settlement and compromising,
7 that's not the same thing as
8 'evergreening'?

9 A: No, 'evergreening' really is the term applied
10 to situations where the bank realizes that a
11 debt is going to slide into the
12 non-performing category, and what the bank
13 then does is reorganizes the debt. Now there
14 are genuine reorganizations but genuine
15 reorganization more often than not involves
16 perhaps the introduction of new capital into
17 the business, the taking on board a partner
18 in the business or something that
19 substantially changes the basic structure of
20 the business and makes it more viable. What
21 banks do and it happens quite often, is simply
22 say well just before you slide into the non-
23 performing category, let me restructure,

24
25

1 that is, I take all your liabilities and
2 repackage them somehow a bit differently.
3 Now in my opinion even this has its merit.
4 You might be able for instance if you have
5 a high cost overdraft, you might be able in
6 that repackaging to hive off 90% or even
7 the whole of that overdraft loan with a
8 fixed repayment programme, change your
9 interest rates, reduce them perhaps in the
10 case of the loan, extend the life of the
11 loan to give the business a chance to
12 breathe. So I think there is merit in this
13 reorganization but the regulatory
14 authorities tend to view such an
15 arrangement unless there is the
16 introduction of substantially new
17 factors, new capital as I mentioned
18 before, as 'evergreening'.
19 I guess in a way perhaps the focal points
20 of evergreening is if the suspicion is that
21 the reorganization or the change being done
22 is merely to prevent that loan or those
23 facilities
24
25

1 from sliding into the non-performing
2 category.

3 Q: Now, you said the regulators frowned
4 upon this, was this a practice which NCB
5 at the time was engaged in? The
6 negative evergreening, not the positive
7 one?

8 A: I would have to say no, but I have no
9 doubt that based on the Bank of
10 Jamaica's inspections, of which there
11 were many, that the Bank of Jamaica
12 would have a different view.

13 COMM BOGLE: I just have one question, Mr. Cobham.
14 When the debt was transferred to FINSAC
15 and the bonds were issued for the debts
16 transferred, did the bonds cover the
17 principal plus accumulated interest or
18 principal alone?

19 A: Principal plus interest.

20 Q: Principal plus all the accumulated
21 interests?

22 A: Yes.

23 COMM BOGLE: Thank you?

24 A: There were situations where interest
25 that was charged had been set aside and

1 put into an accrual account and in which
2 case as I said, it was a paper entry in
3 the sense that could be without
4 affecting the profit of the bank that
5 could be reversed. So in that case what
6 would have gone to FINSAC would be after
7 such interest had been reversed. It is
8 a holding account, but accrual account.

9 COMM BOGLE: So therefore, after the 365 days and the
10 loan is now totally bad if one might put
11 it that way, interest would still be
12 charged but would be put in an accrual
13 account?

14 A: Yes.

15 COMM BOGLE: When the balance was being transferred
16 to FINSAC, was that accrual account then
17 added to the amounts being collected
18 for? In other words, did the bonds
19 cover the accrual account as well?

20 A: No.

21 COMM BOGLE: It did not?

22 A: No.

23 COMM BOGLE: So the bonds, in other words NCB would
24 have been paid for the principal plus
25 the interest up to, let's say, 365 days?

1 would go to FINSAC.

2 COMM BOGLE: So the bonds would not cover the accrual
3 amount?

4 A: No.

5 COMM ROSS: Mr. Cobham, could you tell us something
6 about the composition of the Board while
7 you were Managing Director and something
8 about the relationship, I guess between
9 management and the board in terms of
10 policies and those sort of major
11 decisions?

12 A: Yes. Give me a moment please. In
13 anticipation of that question I had sort
14 of gotten -- now when you say this, are
15 you sort of referring to the areas with
16 responsibility of the board.

17 COMM ROSS: Right?

18 A: Well, I guess we can look at it in two
19 ways. The Board of Directors was
20 responsible for the establishment of
21 credit strategies and objectives and the
22 approval of credit risk principles. In terms
23 of figures, the limit, anything over \$40
24 million, any facility over \$40 million had to

be approved by the Board

1 of Directors. The Managing Director and
2 this also applied to the General Manager
3 Credit, tended to establish the credit
4 risk management which principles he
5 would then send to the Board for
6 approval and approve the actual credit
7 procedures.

8 The Managing Director had a limit of \$40
9 million and then this was broken down
10 further; General Manager Credit -- \$25
11 million; Senior Assistant General
12 Manager -- \$15 million; Assistant
13 General Manager \$10 million and so on
14 down the branch to Credit Officers. I
15 don't know if that answers or partially
16 answers your question.

17 COMM. ROSS: Partially, yes, but could you tell us a
18 little bit about some of the
19 considerations that the Board would have
20 taken, some of the deliberations the
21 Board would have taken in relation to
22 the environment at *the* time, the
23 obviously deteriorating financial
24 conditions of the bank?

25 A: Yes, the Board, and here perhaps I

1 should also remind the Commission that the
2 composition of the board varied dependent on
3 the ownership of the shares at the bank. The
4 process of evaluation, and I am speaking now
5 particularly about lending, the process of
6 evaluation was essentially, I would like to
7 think, no different at the Board level than
8 it was at the lower level, it was just a
9 question of quantum. So unfortunately I
10 think that at that time, perhaps undue
11 emphasis was placed on the quality of the
12 offered security and perhaps not as rigorous
13 an examination in terms of the kinds of
14 stress that is now done of the viability of
15 the business. Customers tended to put
16 forward a sort of rose tinted views of the
17 business to come and although we did discount
18 this in many ways, we asked the relevant
19 questions but I think whereas today there is
20 an approved and accepted method of applying
21 the various stress tests to the projections
22 which customers bring
23 forward, that formal application did not
24
25

1 exist then. We tended to rely to a large
2 extent on the value of the security. And in
3 the nature of things depending on the
4 external environment that value of security
5 really, no matter what it says on your books,
6 it really is only as good as your ability to
7 sell within a given time which I think is why
8 the Bank of Jamaica in its exchange approach
9 considered that if after 365 days you have
10 securities which you have not been able to
11 sell, then as far as they are concerned they
12 aren't prepared to consider those at all as
13 securities so you have then to provide for
14 100% of the debt. I think that pinpointed a
15 weakness in our approach, I think that was
16 it. So in many cases we found ourselves with
17 property which nominally was of value, the
18 difficulty was in a market the size of
19 Jamaica to find buyers and that again was a
20 lesson to be learnt.

21 I would say too that the strict approach
22 taken -- every time you pick up these
23
24
25

1 days a set of accounts you see the
2 breakdown in any financial institution,
3 any insurance company, credit risk,
4 interest rate risk, foreign exchange
5 risk, liquidity risk, this was not at
6 that time as formalized. There were
7 bits and pieces in place and if look at
8 it, dependent on the business, but I
9 think, at that time, is when the formal
10 adoption of that sort of rigor came into
11 being.

12 COMM BOGLE:

13 Mr. Cobham, I am just taking you back to
14 that question that I asked you because I
15 want to make sure that I understand
16 exactly what took place, and this has to
17 do with what the bonds represented and
18 can we look at just, for an example here
19 so that I can get a better
20 understanding, there is a loan for \$100
21 million and that is the principal.

22 Interest accumulated for the 365 days,
23 up to 365 days, the loan is now totally
24 bad, was \$40 million dollars, making a
25 total of \$140 million. Subsequent to
this there is an additional \$30 million

1 which would have gone to what I call or
2 we may call the memorandum account, the
3 accrual account, so we have the 100
4 million, the 40 million making the total
5 of 140 million and the 30 million making
6 a total of 170 million. What would the
7 bonds be paying for? Would it be the 100
8 million, the 140 or the 170?

9 A: 140.
10 COMM BOGLE: 140 million. Thank you very much.

11 There is the situation of course that
12 many financial institutions had close
13 ties with other organizations,
14 especially insurance companies and it is
15 felt that in some cases it is because,
16 well the close tie and the support given
17 to these insurance companies or sister
18 companies caused tremendous strain on
19 banks and could be a major part of the
20 failure of the banks. In NCB's case
21 there was Mutual Life. To what extent do
22 you think that the support given to Mutual
23 Life was rigorously policed? To what extent
24 do you think that, that affected the
performance and ultimate

1 failure, if one may put it that way, of
2 NCB?

3 A: I am totally certain that if Mutual Life
4 had been an arm's length customer, the
5 approach at the bank would have been
6 very different, which I mentioned
7 earlier, the risk of related party
8 transactions. I think in the case of
9 NCB, I think it was perhaps that
10 proverbial straw that broke the camel's
11 back. If your decision-making as a bank
12 is made in your Board room and there is
13 an element of, more than an element of
14 self interest, represented in the
15 composition of your Board, then there
16 are going to be problems.

17 COMM BOGLE: What was the relationship between NCB
18 and Mutual Life? Because I note in your
19 NCB Group page, Mutual Life was not
20 mentioned at all. What was the
21 relationship?

22 A: No, just a shareholder and customer;
23 shareholder/customer. I mean, when the
24 NIBJ sold its remaining shareholding
25 which represented I think, about 39% of

1 NCB, that is 23.4 million shares, they
2 were sold initially to this hybrid
3 company called Jamaica M&M. That company
4 really -- Jamaica National gave up its
5 interest in Jamaica M&M pretty quickly
6 and it became wholly owned by Jamaica
7 Mutual. So it would not appear in the
8 sort of list of subsidiary companies of
9 the NCB Group.

10 COMM BOGLE: So therefore Mutual Life being a
11 shareholder then, major shareholder of
12 NCB, would have wielded quite a lot of
13 influence over the borrowings of Mutual
14 Life?

15 A: Yes.

16 COMM BOGLE: As a result of which one could conclude
17 that NCB, being influenced by this
18 influence, would not have carried out
19 the necessary due diligence or the
20 necessary follow-up that should have
21 obtained in such a situation?

22 A: I think that is a fair comment.

23 MRS PHILLIPS: Mr Chairman, could I ask to clarify
24 something with the witness for the
25 benefit of my understanding of the

1 principle that he was speaking about?
2 There has been some -- perhaps through
3 you, if I could perhaps ask him whether
4 or not the Agreement of the debt
5 portfolio from NCB was a written
6 Agreement and whether in the terms of
7 that Agreement if it had specified all
8 that was sold? In other words, loan and
9 all its attendant rights would have been
10 sold so that what is paid for, it may be
11 the principal plus certain amount of
12 interest but what was sold in the entire
13 debt...

14 A: Sorry, I...

15 COMM BOGLE: All right, you may rephrase that
16 question.

17 MRS PHILLIPS: May I ask that question?

18 A: Yes, please.

19 Q: Mr. Cobham, would I be correct in
20 thinking that this sale of the
21 non-performing loans from NCB to FINSAC
22 would have been the subject of a written
23 Agreement?

24 A: Yes, you are correct.

25 Q: And in that written Agreement would it

1 set out everything that had been sold?
2 In other words, the loan and all its
3 attendant rights?

4 A: I believe so, and I am quite happy to
5 provide you with a copy of the
6 Agreement.

7 Q: That would be very helpful.

8 COMM BOGLE: That would be very helpful if you could
9 provide us with it, that would be very
10 helpful. I take it you will send it to
11 Secretariat here.

12 A: Yes, sir.

13 COMM BOGLE: And we will pass it on.

14 A: Very well.

15 COMM ROSS: If we could just go back to the question
16 of Mutual Life. Mr. Cobham, did you
17 mention earlier that the debts to NCB
18 got as high as 3.6 billion?

19 A: It exceeded that. Perhaps I should read
20 an excerpt from the KPMG comments on
21 this matter, it's a document, and this
22 section is headed: "**Related Party**
23 **Transactions**". . . .

24 COMM BOGLE: What document is that?

25 A: This is an independent Business Review

1 of the NCB Group undertaken by KPMG in July
2 1997. And the relevant paragraph does say:

3 **"The key related party transactions**
4 **concerned Mutual Life, NCB Group Limited's**
5 **principal shareholder. As at 31st March**
6 **1997, the bank's total advances to Mutual**
7 **Life exceeded 3.6 billion which was by far**
8 **the bank's single largest exposure. The**
9 **advances consisted of 1.4 billion of loans**
10 **and overdrafts and 2.2 billion of commercial**
11 **papers.**

12
13 **Despite Mutual Life's current financial**
14 **difficulties, the bank continues to accrue**
15 **interest on these facilities. For example,**
16 **interest income for the six months ended**
17 **31st March 1997, amounted to approximately**
18 **\$590 million. In addition the bank continues**
19 **to extend further advances to Mutual Life**
20 **and the total exposure at the end of May had**
21 **risen to in excess of \$4.3 billion.**

22
23 **We understand that all related party**
24
25

1 **transactions including those with Mutual**
2 **Life are arm's length and should be**
3 **subject to the bank's normal credit**
4 **policies and procedures.**

5 COMM BOGLE: There being no other questions at this
6 time, thank you very Mr. Cobham.

7 A: Thank you, sir.

8 COMM BOGLE: And I will say just as I say to all
9 witnesses, that we reserve the right to
10 recall you.

11 A: Oh, no.

12 COMM BOGLE: We do reserve that right to recall you.
13 But let me thank you for coming here
14 this afternoon and providing us with
15 this information that you have provided
16 us with.

17 Thank you very much ladies and
18 gentlemen, this Enquiry is now adjourned
19 until next Wednesday at 9:30, next
20 Wednesday which is the 27th of April at
21 9:30.

22 **Adjournment**
23 3:13 p.m.

24

25