

PART 1

VERBATIM NOTES

OF

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

HELD AT

THE JAMAICA PEGASUS HOTEL  
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON

THURSDAY APRIL 14, 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 **DR** PAUL CHEN-YOUNG

Mr. Richard Small- Attorney-at-Law

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

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

REPRESENTING MR PATRICK HYLTON

Mr Dave Garcia - Attorney-at-Law

REPRESENTING BANK OF JAMAICA

Mr. Michael Hylton - Attorney-at-Law  
Mr. Kevin Powell- Attorney-at-Law  
Mr. Robin Sykes- Attorney-at-Law  
Melissa Weston- Attorney-at-Law  
Celeste McCalla- Attorney-at-Law

REPRESENTING JEAN-MARIE DESULME

Mr. Anthony Levy- Attorney-at-Law

GIVING EVIDENCE

Dr. Paul Chen-Young

1 **Thursday 14th April, 2011**

2 **COMMENCEMENT : 10:30 3**

4 COMM. BOGLE: Good morning ladies and gentlemen. The  
5 Enquiry is now in session and may I just  
6 ask all persons to either turn off their  
7 cellphones or ensure that they are on  
8 silence. And I will ask that we  
9 minimize or keep our conversations to  
10 the minimum or at least very quiet.  
11 Today we are here to receive the  
12 submission of Dr. Paul Chen-Young. We  
13 are having this Enquiry via video  
14 conferencing. At this time welcome to  
15 you all. Welcome Dr. Chen-Young.

16 DR. CHEN-YOUNG: Thank you.

17 COMM. BOGLE: At this time therefore I would ask for  
18 the names of the attorneys present for  
19 the record.

20 MR. SMALL: Mr. Chairman, I am Richard Small, I  
21 appear for Mr. Chen-Young.

22 COMM. BOGLE: Thank you.

23 MR. LEVY: Mr. Chairman, I am Anthony Levy.

24 COMM. BOGLE: Representing?

25 MR. LEVY: Representing the people of Jamaica and

1 Mr. Desulme.

2 MR. HYLTON: Michael Hylton, Mr. Chairman,  
3 representing the Bank of Jamaica and  
4 Kevin Powell is with me.

5 MRS. PHILLIPS: Sandra Minott-Phillips, instructed by  
6 Myers Fletcher & Gordon for Jamaican  
7 Redevelopment Foundation Inc.

8 MISS CLARKE: Good morning Mr. Chairman. I am Judith  
9 Clarke, on behalf of the Commission.

10 MR. SYKES: Mr. Chairman, my name is Robin Sykes, I  
11 am an Attorney at the Bank of Jamaica  
12 and with me are Melissa Weston and  
13 Celeste McCalla.

14 COMM. BOGLE: Thank you very much. At this time we  
15 will have Dr. Chen-Young being sworn in.

16 MR. DEPERALTO: Good morning, Dr. Chen-Young.

17 DR. PAUL CHEN-YOUNG SWORN

18 COMM. BOGLE: Thank you very much, Dr. Chen-Young. We  
19 will now ask Mr. Small to start. Mr.  
20 Small?

21 EXAMINATION BY MR. SMALL

22 MR. SMALL: Dr. Chen-Young, can you hear me?

23 A: I can hear you, but maybe you can speak  
24 a little bit louder.

25 Q: Okay. Good morning.

1 A: Good morning.

2 Q: Dr. Chen-Young, did you submit a  
3 submission to this Enquiry?

4 A: I did.

5 Q: And that is this document? (indicating)

6 A: That is correct.

7 Q: I wish to ask you Dr. Chen-Young, just to  
8 summarize the main provisions of your  
9 submission and then after you have completed  
10 that you will be available for  
11 cross-examination.

12 A: Sure. Are you ready?

13 Q: I beg you pardon. You were saying  
14 something?

15 A: Are you ready for my response now? Yes,

16 Q: I am.

17 A: All right.

18 Q: I want you to begin by making your first point  
19 which relates to the high interest rate  
20 policy and its appropriateness to the  
21 situation that the country faced. Thank you.

22 A: Before responding may I thank the  
23 Commissioners for inviting me to testify and  
24 also for their kindness in arranging for  
25 this video conferencing. I

1 2 would respond to the question raised by  
3 4 asking a question, what happened, why, why?  
5 6 Because from what I have read from various  
7 8 witnesses I could say it keeps popping up,  
9 thus it follows my line. I will address by  
10 asking why, and in this regard I turn your  
11 attention to page 5 of my submission. On page  
12 5 you will see a quotation from the  
13 Honourable Minister of Finance, Dr. **Davies**  
14 **in his 1995/96 Budget presentations. The**  
15 **quotation is as follows: "The impact of**  
16 **monetary and fiscal policies...on interest**  
17 **rates was not supportive of major expansion**  
18 **of the economy. But this is a deliberate**  
19 **choice."** A deliberate choice. I submit that  
20 this is the core reason for the problems  
21 experienced with high interest rate and  
22 other factors. So given the pre-Finsac era  
23 we have this major and far-reaching  
24 statement by the Minister of Finance in  
25 Parliament. 'High interest rate even if we  
have to sacrifice economic growth', that is  
certainly an alarming statement.

1                   The other components or major factor which  
2                   had to be attributed to the high interest  
3                   rate and other problems which were  
4                   associated with it was the fiscal policy of  
5                   Government. When the Government took over,  
6                   I think it was 1989, there was a fiscal  
7                   surplus amounting up to two percent or close  
8                   to three percent of Gross Domestic Product  
9                   up to 1992. By 1996 even before the  
10                  financial crisis and expenditures would  
11                  have resulted, the surplus, the fiscal  
12                  surplus had evaporated and we were looking  
13                  at a pre 1997, at a deficit of some six  
14                  percent of Gross Domestic Product. So I am  
15                  suggesting that there were two major policy  
16                  initiatives or actions and that was the root  
17                  of the problem; the statement by the  
18                  Minister of Finance about sacrificing  
19                  growth to maintain high interest rate and  
20                  secondly, the fiscal problems which were  
21                  created where we moved from a surplus in 1992  
22                  to a deficit even before the financial  
23                  crisis. Arising out of these

24

25

1 two major actions or developments, the data  
2 showed serious disruption in the economy.  
3 For example, the manufacturing sector in  
4 that short period lost over 50,000 jobs; the  
5 agricultural sector, agricultural and  
6 fisheries sector lost over 40,000 jobs. The  
7 deficit with CARICOM which was about US\$66  
8 Million in 1991/92 it rose to \$1.1 Billion  
9 by 1997/98. We had devaluation almost every  
10 year, where the rate of exchange moved from  
11 approximately J\$12 to US\$1 around 1992 to  
12 J\$36 to US\$1 around 1997. Of course, there  
13 was no growth in the economy, GDP and these  
14 were the consequences of these two  
15 fundamental mistakes in the fiscal policy  
16 and the financial policy and this trickled  
17 over into the entire economy causing the  
18 problem where banks, insurance  
19 companies, businesses and individuals  
20 suffered tremendously with the collapse  
21 that followed.

22 I will give my first response on a macro  
23 basis and I do not know, Mr. Chairman,  
24



1                   whether you would like me to continue to  
2                   address the implications on a sector  
3                   basis dealing specifically with the  
4                   Banking and Life Insurance Companies.

5   MR. SMALL:       Yes, we can turn to that once you have  
6                   completed your summary of the overall  
7                   situation. You want to turn now to the  
8                   Banking and Insurance Industry?

9           A:        Thank you very much. Everything had been  
10                   blamed on high interest rate, that of  
11                   itself was a serious cause of the  
12                   problem and it spilled over into the  
13                   Life Insurance Industry. We had, for  
14                   example, surrendered life insurance  
15                   policies -- moving from 800 in 1992 to  
16                   6,400 in 1996/97 -- surrendered, so when  
17                   the high interest rate started hiking  
18                   and the economy started contracting,  
19                   people had to surrender or increase the  
20                   encashment for surrendering on their  
21                   life insurance policies. Life insurance  
22                   premium fell by some 25 percent and as  
23                   these two things happened, the Life  
24                   Insurance Companies were forced to seek  
25                   new sources of funding to meet their

1 obligations. And this is a fact not discussed  
2 and not recognized to the extent that it  
3 justifies it so far. To cite some very  
4 startling figures, the Life Insurance  
5 Industry in 1991 had only \$1 billion of  
6 commercial paper, that's short term paper  
7 which was very popular around that time,  
8 paying interest of about 30 percent. By 1997  
9 that figure had jumped to \$24 billion. So the  
10 Life Insurance Industry as a result of the  
11 encashment, the fall in premium income, was  
12 forced to resort to short term borrowing at  
13 this excessive high interest rate of 30  
14 percent or so. So when we look at the Life  
15 Insurance Industry and we try to find fault  
16 or reason why it collapsed, we must take into  
17 account the decline in its regular flow of  
18 income or cash flow as we call it from  
19 insurance premiums, new policies and with  
20 that decline there was no alternative but to  
21 turn to high short--term funds, and that  
22 contributed tremendously. I would say that  
23 was the

24

25

1 major factor in the decline or collapse  
2 of the Life Insurance Industry, the high  
3 cost of funds and again, the effect from  
4 the high interest rate plus other  
5 factors. The Life Insurance Industry  
6 recognized that there was problem in the  
7 Industry...

8 Q: Dr. Chen-Young, could you just repeat  
9 what you just said because there seems  
10 to have been a glitch in the  
11 transmission?

12 A: Okay. I don't know where to start, but  
13 let me start somewhere that you didn't  
14 get earlier, then I will try and go  
15 back. What I said was that the Life  
16 Industry feeling the impact, the adverse  
17 impact of reliance on high short-term  
18 debt realized that many of their  
19 projects were no longer viable and a  
20 crisis was imminent, almost, and  
21 executives of the industry in trying to  
22 do something about the problem met and  
23 decided that the matter was so urgent  
24 that we should bring it to the attention  
25 of the Minister of Finance, but we

1 needed to quantify what was the likely amount  
2 that required refinancing or some other type  
3 of support. The industry, the entire  
4 industry, not just one company employed Mr.  
5 Richard Downer of Pricewaterhouse and he did  
6 a survey and he came up with a figure of some  
7 \$20 billion as being required to save the  
8 Industry. Three executives were  
9 appointed to meet with the Minister of  
10 Finance, Mr. Dennis Lalor, Dr. Marshall Hall  
11 and myself. We met with the  
12 Minister of Finance and said, **"we have a**  
13 **problem - that was in 1996 - let's try and**  
14 **do something about it, we need some help."**  
15 The Minister responded quite favourably at  
16 a meeting and said, **let's see proposals.** I  
17 believe all of the companies submitted  
18 proposals, certainly Crown Eagle did. But in  
19 our particular case, I cannot speak for the  
20 other companies, we got no response or we had  
21 probably one meeting or so with the Financial  
22 Secretary, but nothing  
23 concrete whatsoever to say, yes, you  
24  
25

1 have a problem, the industry has a problem  
2 let us try and see how we can assist. No  
3 assistance came and therefore the industry  
4 collapsed as we all know. Not just one  
5 company, all of the major companies.  
6 We now turn to the Banking Industry and here  
7 I would like to introduce some factors which  
8 have not been discussed in trying to  
9 understand why the collapse. Around the mid  
10 1990s the Banking Act was revised and there  
11 were some major consequences on the balance  
12 sheet of the Banking Industry. The first  
13 stage, interest on loans which were not  
14 current would have to be set aside in a  
15 special reserve. T agreed with that and we  
16 all agreed with that policy, but it was a  
17 shock because it impacted on the profit and  
18 loss of the bank. No disagreement with it,  
19 it made sense, but that  
20 happened during this very volatile  
21 period.  
22 Secondly, the bank decided that they  
23 would move away from overdraft  
24  
25

1 facilities, that would have been a sore point  
2 with the regulators and others that  
3 overdraft facility was not a proper way to  
4 provide credit and so there was a definite  
5 movement away from overdraft facilities and  
6 this created problems for some of the  
7 borrowers which resulted in higher debt  
8 provision. Of course, the high interest rate  
9 loan loss provision had to be increased as  
10 borrowers could not service their accounts.  
11 Additionally, those are because of the Bank  
12 changing the Banking Act as such. The Bank  
13 of Jamaica regulations created a very, very  
14 difficult time for the liquidity of the banks  
15 on their profit and loss. And for some  
16 extended period, I do not exactly recall for  
17 how long, the commercial banks, following  
18 the instructions and regulations of the Bank  
19 of Jamaica, had to put away fifty cents out  
20 of every dollar in non-interest bearing  
21 account. So can you imagine the tremendous  
22 impact that would have had on the liquidity  
23 of the commercial banks  
24  
25

1 and also on their profit and loss  
2 statement in having to put away fifty  
3 cents of every deposit in a non-interest  
4 payment account? These are things that  
5 have not been discussed and not being  
6 answered in trying to assess some of the  
7 reasons why the banks collapsed.  
8 Then the inflow of foreign exchange in  
9 response to the high interest rate  
10 prevailing in Jamaica created excess  
11 liquidity with foreign exchange because  
12 interest rates were averaging 50 percent  
13 and so even with the devaluation, a lot  
14 of short term money came into the  
15 banking system and banks found it very  
16 difficult to pay for some of these funds  
17 and sometimes made mistakes in being  
18 less conservative or not as conservative  
19 as they should by being more lax in  
20 their lending and even some of their  
21 investments. So that excess liquidity  
22 did create a problem.

23 MR. SMALL: Have you completed the treatment of the  
24 Insurance and Banking Industry?

25 A: That, I think covers it for the time

1 being. And there is one element too  
2 which is significant. Around that time  
3 Governor Bussieres was very critical of  
4 financial conglomerates, and he said it  
5 on different radio stations. He wanted a  
6 'Chinese wall' drawn between banks and  
7 insurance companies.

8 MR. SMALL: A what wall?

9 A: 'Chinese wall' it is called, that  
10 separates banking from insurance et  
11 cetera. So for those financial  
12 conglomerates who had banks, insurance  
13 companies, building societies and so on,  
14 the criticism by the then Governor did  
15 not get confidence and that cannot be  
16 overlooked. So the banking and life  
17 insurance companies, like the other  
18 entities, business entities and  
19 individuals, were operating in a very  
20 hostile economic environment. One could  
21 almost say it was like a ship going out  
22 to sea with calm waters and then having  
23 to face numerous hurricanes, high  
24 interest rates, people not paying their  
25 loans, people who borrowed can't service



1                   their loans, devaluations, et cetera,  
2                   and so the adverse and harsh economic  
3                   climate impacted on the Banking and Life  
4                   Insurance Industries as well as, of  
5                   course, the businesses and individuals.  
6                   And so while I would not in anyway  
7                   suggest that the management must not  
8                   bear some responsibility, because  
9                   management must bear some responsibility  
10                  if your business fails, the reality is  
11                  that the hostile environment made it  
12                  extremely difficult to survive and to  
13                  operate on a normal basis and forced  
14                  entities into directions which they  
15                  would not normally have gone. I just  
16                  make that observation out of it.

17       MR. SMALL:           I assume you have completed the  
18                                   treatment of the Banking and Life  
19                                   Insurance Industries?

20           A:                Yes, I have.

21           Q:                I want you to turn now to the **Manner in**  
22                                   **which Finsac handled the Crisis?**

23           A:                Well, may I draw your attention to page  
24                                   18 of the submission.

25           Q:                Yes.

1           A:           And this is vital in the work of this  
2                           Commission in trying to understand and  
3                           assess the role of FINSAC.

4                           In its Annual Report, 1998 Annual  
5                           Report, that's FINSAC, it's the first  
6                           annual report. I quote.

7                           **"FINSAC Limited was incorporated with**  
8                           **the specific mandate from the Government**  
9                           **to resolve the problems of solvency and**  
10                           **liquidity being experienced by the**  
11                           **financial sector."**

12                           That's the mandate. The report, that's  
13                           the first report continued:

14                           **"FINSAC will assist institutions in**  
15                           **developing workout plans, where**  
16                           **necessary, to return them to viability.**

17                           I repeat.

18                           **"FINSAC will assist institutions in**  
19                           **developing workout plans, where**  
20                           **necessary, to return them to viability.**

21                           **Such plans...**

22                           And I am still quoting.

23                           **...will form the basis for the**  
24                           **conditions *which* FINSAC will attach to**  
25                           **financial assistance.**

1           **"FINSAC will monitor the implementation of**  
2           **such plans on a continuing basis and will**  
3           **evaluate their effectiveness in achieving**  
4           **their specific objective". Finally.**

5           **"FINSAC is excepted to have an active life**  
6           **of about five to seven years. Support is**  
7           **provided to companies on the basis of**  
8           **rehabilitation plans to be implemented over**  
9           **five years.**

10           Nothing could be clearer about the role of  
11           FINSAC. When we looked at the operations of  
12           FINSAC, the outright sale --sorry, let me use  
13           the very-- I cannot think of any financial  
14           institution where FINSAC provided the type of  
15           assistance required under its mandate, I  
16           cannot think of one. And later on I will show  
17           the efforts of Eagle and how FINSAC under its  
18           mandate should have provided the support for  
19           Eagle to become viable by substituting  
20           high-cost funds for lower priced funds but  
21           I will come to that later. I can't think of  
22           one financial institution and if that is so,

1 then, it seems that the answer is  
2 obvious that FINSAC abrogated its  
3 responsibility. It's crystal clear and I  
4 would say by extension, by not having  
5 workout plans with many businesses that  
6 were in trouble and even individuals which  
7 they tend to Finsac, that FINSAC failed  
8 these individuals and these businesses  
9 and, abrogated its responsibility.

10 I go on to say that the divestment of entities  
11 which were taken over by FINSAC was done in  
12 a manner which unnecessarily burdened the  
13 Jamaican taxpayers. I say that on the basis  
14 that in respect of the financial  
15 institutions, there was no arrangement for  
16 the Government to participate in any  
17 improvement in the financial position of  
18 entities that were supported. For example,  
19 in the United States which is the most  
20 current experience with financial problems,  
21 plus other countries of course, the type of  
22 assistance provided allowed the US Treasury  
23 to profit by over US\$6 billion,  
24  
25



1                   implication which I will discuss later  
2                   on.

3           Q:           Dr. Chen-Young, before you move from  
4                   that, I want you to explain in simple  
5                   terms the contrast between what you say  
6                   took place in the United States; in  
7                   Trinidad and in other countries as  
8                   contrasted with the way in which the  
9                   Government intervened in the industry in  
10                  Jamaica.

11          A:           It is very simple. In Jamaica, the  
12                   Government said, okay, banks, life  
13                   insurance companies, you are in trouble,  
14                   we want to protect the depositors and  
15                   the policy holders, we will provide all  
16                   the moneys, we will take over bad debts,  
17                   and we will clean up the balance sheets  
18                   and then we sell out these entities. In  
19                   these other countries that's not so.  
20                   They provided long term loans with some  
21                   participation features and in some  
22                   cases, persons, in fact in these  
23                   companies. Quite a dramatic difference.

24          Q:           And how did they make the profit?

25          A:           Well, the companies turned around after

1 getting the assistance. Shares price  
2 went up, if they owned shares then they  
3 would benefit. If you have convertible  
4 for example, convertible loans, once the  
5 companies turn around they can convert  
6 their loans into equity and participate  
7 in the wellbeing of the companies. We  
8 didn't use our imagination, we just  
9 simple say yes, take the money, that's  
10 all.

11 Q: Okay, you were going on to another  
12 point.

13 A: z had mentioned the unnecessary cost to  
14 the taxpayers by this method of  
15 financing. But probably far more  
16 important -- well, I wouldn't say far  
17 more but equally or more important,  
18 let's put it that way, are the economic  
19 costs, the economic costs of that policy  
20 of selling off assets. It is simple  
21 enough to say to the Beal Bank, we will  
22 sell our bad debts, give us a percentage  
23 of what you collect, that's financial.  
24 But economic cost is greater because the  
25 economic cost is not a one-off

1 transaction, it's a cost which continued  
2 over the years. In other words, just as how  
3 FINSAC divested the entities, we will have  
4 severe consequences on our balance of  
5 payments. And by this I mean, that the  
6 investment income which is earned from these  
7 entities which were sold to overseas  
8 interests -- and nothing is wrong with them  
9 taking a bar in, but the profits earned will  
10 have a drain on our balance of payment each  
11 year going on *in finitum*.

12 To give you an example. The investment  
13 income outflow in 1998 or so, 1999, was over  
14 about US\$300 million. In 2007, it was close  
15 to US\$600 million. Now, the  
16 investment income is not through the profit,  
17 is either other elements like interest, but  
18 a large or some components of that would be  
19 profits earned from these entities which  
20 were sold. And I will go on later when I am  
21 summarizing to show a little economic model  
22 where if you have outflows they offset your  
23 export and make it very difficult for  
24  
25



1 economic growth so we have a balance of  
2 payment effect. Perhaps, also very  
3 significant, I have to say, perhaps more  
4 important, because it affects investment, it  
5 kills entrepreneurs. When you wipe out so  
6 many thousands of businesses and when you  
7 wipe out or take away financial institutions  
8 which were built up by Jamaicans, then you  
9 have dealt entrepreneurship a severe, almost  
10 a knock-out blow, and people will not invest,  
11 they will not take as much risk and  
12 therefore, investment will suffer and you  
13 will have jobs, not enough jobs, not as much  
14 jobs created. And this has very, very  
15 far-reaching long term effect on the economic  
16 growth and the development of the country.  
17 People see how you treat your investors. And  
18 one cannot escape the fact that this has  
19 turned off many, even thousands of investors  
20 who are now very risk averse. And let me give  
21 you a another point about the banking sector  
22 just in  
23 passing. Once you wipe out so many banks  
24  
25

1 and life insurance companies you are  
2 left with just a few. And from an  
3 economic point of view, the level of  
4 competition is reduced. It makes  
5 borrowers have less choice in terms of  
6 where they borrow money, whether it's  
7 for mortgage or its for businesses and  
8 that that's a real economic cost. And  
9 we talk about lower interest rate, the  
10 best way to lower interest rate is for  
11 more competition. So you have  
12 eliminated the competition and maybe you  
13 have the problem where you have fewer  
14 number of entities in a market which was  
15 supported by -- maybe double the amount  
16 of entities or banks and insurance  
17 companies. So these are real costs.  
18 There is more to be said but I think I  
19 would need to continue on all the  
20 matters and then leave this for  
21 questioning.

22 Q: You now wish to turn to specifically how  
23 FINSAC dealt with Eagle.

24 A: Well, yes. (Dr Chen-Young laughs) I  
25 laughed because it's a story worth

1           telling and it's a sad story in terms of  
2           destroying one of the most successful and  
3           diversified companies built from scratch.  
4           With that opening statement, let me begin  
5           by saying this.

6           We at Eagle realized that there was a  
7           problem and in 1996, we sought to refinance  
8           our high cost debts in the same way that  
9           the life insurance companies saw a problem  
10          and tried to refinance their debts. We said  
11          we had to do something about it and so, we  
12          pulled together the best that we had in  
13          Eagle, five financial entities: Eagle  
14          Commercial Bank, Eagle Permanent Building  
15          Society, Eagle Unit Trust, Eagle General  
16          Insurance and Eagle Merchant Bank, and all  
17          these entities were viable and supported  
18          by audited accounts shown in what we called  
19          the Eagle Premium Growth Fund. So we took  
20          these five entities along with six  
21          commercial properties: Eagle Commercial  
22          Buildings in Montego Bay, I think  
23          Mandeville and in Kingston which were  
24  
25

1 leased to Eagle companies and then we  
2 took Holiday Inn which was a viable  
3 entity paying its way and we created  
4 what was called the Eagle Premium Growth  
5 Fund to try and raise \$6 billion which  
6 was to pay off our expenses, short term  
7 money. We sought help from  
8 quasi-government entities, we got  
9 nothing. What's that?

10 Q: No, nothing was said. Nothing was said.

11 A: Okay. Like the National Insurance Fund,  
12 no support, we marketed heavily in  
13 Jamaica trying to have people buy shares  
14 in this, it became a unit trust, we went  
15 to the United States, Washington, New  
16 York, Atlanta, Los Angeles, to try and  
17 get Jamaicans to subscribe, we did what  
18 they call a "road show". We went to  
19 England, the cities which are heavily  
20 populated by Jamaicans, and we tried to  
21 sell these Eagle Premium Growth Fund.  
22 We did not raise the fund and one of the  
23 main reasons --I am not saying it's the  
24 only reason, but one of the main reasons  
25 was that we were expecting Government

1 Papers. When the fund was launched --  
2 incidentally it was launched by Dr Omar  
3 Davies. When it was launched the Government  
4 issued an unlimited amount of Government  
5 Stocks at 50% interest rate, 50%, so, an  
6 investor looking at a unit trust with --  
7 while even though well defined and with good  
8 assets, banks, tourism, commercial  
9 buildings, you know, you can't blame them for  
10 saying we can get 50% on Government Paper,  
11 why should we buy your Premium Growth Fund  
12 or your unit? So that failed.

13 I need to say a word about the entities in  
14 the Premium Growth Fund because that is  
15 related to the question you have asked  
16 about how did FINSAC treat Eagle? When  
17 FINSAC took over the Eagle Group, and I am  
18 going to say something about that, I should  
19 say something, when we did not raise enough  
20 funds from the Eagle Premium Growth Fund,  
21 we went to the Bank of Jamaica and said,  
22 we have tried to raise funds, we need funds,  
23 we need some support, help us to get a  
24  
25

1 restructuring. That was in 1995 or 1996.  
2 They were not very helpful. They said go  
3 raise capital. Now, where are you going to  
4 raise that sort of money in Jamaica  
5 especially in those times? As the  
6 situation deteriorated we went back to the  
7 Bank of Jamaica, and we had a  
8 meeting in February 1997, and the  
9 Minutes of that Meeting were recorded in  
10 Eagle Merchant Bank Board Minutes of  
11 February 25, and if you turn to page 39 of  
12 the submission you will see. And the import  
13 of this is that it showed you what we were  
14 trying to do before FINSAC took over Eagle.  
15 So if you turn to page 39, you will see what  
16 was minuted in Eagle Merchant Bank Board  
17 Minutes. Okay in the Eagle Merchant Bank  
18 Board  
19 Minutes of February 25, 1997 it states as  
20 follows and I am quoting from the Minutes.  
21 **Mrs. Coke, Mr. Messado, Mr. Hamilton who was**  
22 **the Financial Controller; Mr. Keith Senior,**  
23 **who was General Manager of Eagle then and Dr.**  
24 **Chen-Young met with the**

1 Bank of Jamaica...The meeting ended on a  
2 constructive note with management being  
3 asked *to* look at the future in three  
4 different ways.

5 1. Crown Eagle Life (CEL) issuing and  
6 dealing with the insurance products only,  
7 excluding Promissory *Notes* and Asset  
8 Investor policy.

9 These are the high-cost short term  
10 borrowings.

11 2. *The* banking operations of ECB absorbing  
12 the profitable sections of EMB and Eagle  
13 Permanent Building Society.

14 3. The *other* entities in a separate group  
15 which would be dealt by FINSAC on the basis  
16 of viability and if this was not possible  
17 then sale and recovery over a period of time.  
18 Government would have substantial ownership  
19 in exchange for the injection of J\$5 billion  
20 approximately in share capital.

21 That what's the Bank of Jamaica said we  
22 should look at and we are now denied this,  
23 despite this being in the record elsewhere.  
24  
25

1 Following that meeting we then met with  
2 Chairman of FINSAC and we had several  
3 meeting where Dr. Gladstone Bonnicks and the  
4 minutes of Eagle Merchant Bank, March 4,  
5 1997 states: I quote.

6 **Directors were advised that the first**  
7 **meeting between Eagle and FINSAC was**  
8 **scheduled for this evening to be**  
9 **followed by negotiations tomorrow and it was**  
10 **expected that by weekend there should be an**  
11 **agreement.**

12 These are minutes of Eagle Merchant Bank  
13 following meetings with Bank of Jamaica and  
14 Dr. Bonnicks of FINSAC. So we were led, we told  
15 them we had a problem, they looked at us, they  
16 saw where there could be viability and we  
17 were led to believe that we would have a joint  
18 venture and that Government would have taken  
19 substantial equity in the Eagle Group. Well,  
20 that was not to be so. We met with Dr. Bonnicks  
21 and at that meeting Ms. Shirley Tyndall, the  
22 Financial  
23 Secretary, and a host of persons, I  
24 believe legal and others, had just



1 simply announced, "**we are taking over**  
2 **Eagle.**" Just like that. I said, Are you  
3 crazy? What about all the discussions? What  
4 about the understanding after what Eagle  
5 has built, what we have done to build up  
6 the Group? She said, that's it, we are  
7 taking over Eagle and I was then forced to  
8 sell it or to have Eagle sold and they took  
9 over everything. Now, Dr. Davies, when he  
10 testified before the Commission made the  
11 comment -- I think it's-- no, made the  
12 comment that some of Eagle's entities were  
13 not viable. He said the Eagle Commercial  
14 Bank was viable but some of the other Eagle  
15 entities were not viable. But let me say  
16 this, if we go back to the entities in the  
17 Eagle Premium Growth Fund which is the core  
18 of the Eagle network, and they would have  
19 come under Crown Eagle which was their  
20 holding company; that was where the problem  
21 was because of the high cost of the short  
22 term paper. All the entities were viable,  
23 the Merchant Bank, the  
24  
25

1 Commercial Bank, the Building Society, the  
2 General Insurance Company, and the Eagle  
3 Unit Trust. So I believe Dr. Davies erred  
4 when he made that comment. And I would want  
5 to mention that the forensic auditors, they  
6 were deeply trying to unroot anything they  
7 could find in Eagle. They tried to discredit  
8 the entities in Eagle Premium Growth Fund.  
9 They even raided the offices of our  
10 auditors, KPMG, but again, they could not  
11 discredit the viability of these entities.  
12 And they are shown in the submission, I think  
13 it is 62 to 68, we need not go over that but  
14 towards the end we have the entities listed  
15 and we showed the projection that these are  
16 viable entities.

17 So the point I am really making is this. That,  
18 before FINSAC took over Eagle, initiatives  
19 were taken by Eagle itself to raise funds  
20 to refinance. I don't believe any other  
21 financial entity in Jamaica -- I correct  
22 myself -- not that I don't believe, no other  
23 financial  
24  
25

1                   entity in Jamaica went to such length to  
2                   seek refinancing to replace high cost  
3                   money as we did at Eagle. None. They  
4                   also        as I said I took initiative with  
5                   the Bank of Jamaica and FINSAC and the  
6                   entities comprising Eagle were viable  
7                   entities; as a matter of fact  
8                   Dr. Bonnick wrote that Bank of Nova  
9                   Scotia which was asked to look at Eagle  
10                  saw Eagle Commercial Bank to be a very  
11                  viable entity and I am trying to find  
12                  the specific section so I could read it.

13            Q:                   You are looking for Jackson's comment?

14            A:                   If you look at page 40 -- I don't think  
15                                  it's page 40.

16   MR. SMALL:                   Page 42.

17            A:                   Yes, thank you very much Mr. Small. In  
18                                  a letter dated October 2003 Dr. Bonnick  
19                                  wrote and I quote, page 42.

20                                  **I can truthfully attest to the fact that**  
21                                  **he, Paul Chen-Young co-operated with**  
22                                  **FINSAC by facilitating the transfer of**  
23                                  **Eagle enterprises. Also I told him that**  
24                                  **I could attest to the fact that Bank of**  
25                                  **Nova Scotia during the first four months**

1                   **after the purchase/takeover gave the**  
2                   **impression that it had found these**  
3                   **institutions to be reasonably well run.**  
4                   **The main criticism being that they were**  
5                   **overstaffed for the amount of business**  
6                   **they were doing at that time.**

7                   That is Dr. Bonnick writing about me and  
8                   referring to Bank of Jamaica.

9           Q:           Dr. Chen-Young will you hold a moment  
10                   please, there is a technical problem  
11                   which we need to solve. Go ahead  
12                   Dr. Chen.

13           A:           Then noted Financial Consultant, Mr.  
14                   John Jackson testified as follows,  
15                   testified in court as follows.  
16                   Eagle Commercial Bank was one of the  
17                   soundest in the island and it was ranked  
18                   alongside Bank of Nova Scotia. At no  
19                   time was any impression given to me that  
20                   would suggest that the Merchant Bank was  
21                   not sound. This seeks to be in conflict with  
22                   the Avis Report, that is the report prepared  
23                   by the Forensic Auditor, that is Mr. John  
24                   Jackson.  
                 So the point -- what is clear is that

1 these entities were viable and FINSAC could  
2 have taken them if it followed its mandate  
3 and for no reason that I am aware of, FINSAC  
4 acted arbitrarily, disregarded its mandate  
5 and took over the Eagle Group, dismantled  
6 everything and brought excessive pressure  
7 on me personally which I will deal with later  
8 on, but I think for the time being that will  
9 address the FINSAC action. And let me just  
10 say one thing about FINSAC in relation to  
11 loan of businesses and individuals. First of  
12 all, it would have been more efficient and  
13 sensible and helpful to those businesses and  
14 individuals who were experiencing problems  
15 for the Government or FINSAC to have said  
16 okay, we will clean up the balance sheet, you  
17 have a problem, our mandate says we are to  
18 try and help you to get back on track, the  
19 banks and insurance companies cannot keep  
20 bad loans on their balance sheet, we will  
21 take them off the balance sheet like what  
22 they did but instead of selling

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                   them to a debt collector, that is what  
2                   we banks were, FINSAC should have, not  
3                   could have, should have said, we will  
4                   retain the commercial banks and other  
5                   financial entities to develop, work out  
6                   plans with customers, that is how  
7                   banking is done, if a customer has a  
8                   problem, you try and work with that  
9                   customer, you would know the customer  
10                  and you modify their loan and try and  
11                  get that customer back on his feet. You  
12                  pay the bank, the Government could have  
13                  paid the bank a fee to do that, to  
14                  handle those transactions, instead it  
15                  cruelly and harshly sold out all these  
16                  loans and sold it to Beal Bank and  
17                  eventually to the other entities with  
18                  the hardship we have heard about at this  
19                  enquiry.

20                Q:                   Now Dr. Chen-Young, in your next  
21                                   chapter, Chapter 7, you deal with the  
22                                   legal action taken against you and 1  
23                                   don't propose to go into that because  
24                                   the matter in fact is before the court  
25                                   for hearing shortly.



1 explain the flurry of lawsuits brought  
2 against me because the public should  
3 know. You know I have contributed to my  
4 country, I have built institutions along  
5 with all my directors and management and  
6 staff and I must say something about you  
7 know whatever took place. First of all,  
8 when FINSAC took over the Eagle Group,  
9 they did an initial forensic audit, and  
10 they sent the report to the Board of  
11 FINSAC, and Dr. Bonnick, the Chairman of  
12 FINSAC told me that after having  
13 reviewed the report of the Forensic  
14 Auditors, they found no basis for  
15 continuing with the service of the  
16 forensic auditors or proceeding any  
17 further with any forensic work on the  
18 Eagle Group, and so, I understand the  
19 forensic auditors, Avy Linguist was  
20 dismissed. They were not satisfied and  
21 they wrote a letter to the Financial  
22 Secretary.

23 Q: Who was not satisfied?

24 A: This is important.

25 Q: I am saying who was not satisfied?





1 criminal charge has ever been filed against  
2 me, none. The five claims were as follows.  
3 That Eagle Merchant Bank spent too much  
4 money to buy a stock broking company in  
5 Miami. An investment was made and that I  
6 Paul Chen-Young as the Chief Executive is  
7 guilty of that even though the Board  
8 approved of that transaction.

9 Secondly, that I used nine hundred and fifty  
10 thousand US of Eagle's money to invest  
11 overseas. The court dismissed it to say, this  
12 is my money and when the work was done which  
13 showed all the supporting evidence that it  
14 was my money and the court dismissed that  
15 charge/ claim and also the claim that we  
16 spent too much money. But on the first one,  
17 what is interesting is that I am being held  
18 liable personally for making that purchase  
19 when I was acting as the Executive with the  
20 approval of the Board.

21 The other three claims were as follow. The  
22 first is that again as an Executive  
23  
24  
25

1 I invested too much of the bank's money in  
2 IBM shares. There was no claim that I used  
3 the money for any purpose that would benefit  
4 me, that's not the issue, there was never any  
5 claim that there was benefit accruing to me  
6 but I am being held responsible as the  
7 Executive of the bank for making that  
8 investment even though I had the authority  
9 and the Board's approval to make such an  
10 investment. As I said, it is before the Court  
11 of Appeal and I am not going to go any further  
12 into that.

13 The next claim which is still before the  
14 Appeal is that expenditures made on the  
15 building occupied by Eagle and Crown Eagle,  
16 Eagle Merchant Bank at Grenada Crescent were  
17 a breach of fiduciary duty. Now these  
18 expenditures were approved by the Board but  
19 again that is before the Court of Appeal and  
20 I will express no opinion on that.

21 And the third was that funds were borrowed  
22 for a company which was -- that claim was  
23 about to enter into a joint  
24  
25

1 venture with a Chinese Group and which was  
2 reported to the Board. Now of the three  
3 claims, the IBM shares, so called loss in IBM  
4 shares, and I repeat there was no claim that  
5 I benefited from this transaction, the loss  
6 of US\$5M, the judge ruled that I was  
7 responsible, me Paul Chen-Young for US\$10M,  
8 that is interest added to the \$5 Million.  
9 On Grenada Crescent, the expenditures which  
10 were claimed that I breached my fiduciary  
11 duty was sixty or sixty-five million  
12 Jamaican, the judge ruled that I should pay  
13 two hundred and forty-five million  
14 Jamaican, interest calculated on that  
15 amount; and on the company where joint  
16 venture was discussed seven hundred  
17 thousand Jamaican was borrowed and the judge  
18 ruled that I should pay eleven million  
19 dollars, that included interest. In total,  
20 calculated in Jamaican term, the claim was  
21 for three hundred and seventy million  
22 Jamaican and the judge ruled that I was  
23 liable for nearly nine hundred million  
24 dollars and  
25

1 in none of these claims -- I better not go  
2 any further on that, that is a big difference  
3 between one point two billion and nine  
4 hundred million and most of that ruling is  
5 based on the interest accrued on the fund  
6 and I will express no opinion on the basis  
7 of the Appeal. So, that is what happened and  
8 this has been going on for over thirteen  
9 years, nearly fourteen years, over four  
10 thousand days. It is although the iron fist  
11 of the state was used to destroy, to grind  
12 me and to destroy me but they did not stop  
13 there. I went to America and I resuscitated  
14 an old company which was doing well and  
15 FINSAC took the judgment of Justice Anderson  
16 and came to Miami and got injunction  
17 secretly without any advice to me or my  
18 attorneys and I got a knock on my door at  
19 night with the injunction, at night at my  
20 home freezing my personal assets, freezing  
21 my bank accounts and freezing the assets of  
22 the company. That is what I got. I gave so  
23 much to Jamaica, to my country.

24

25

1 Q: While you are on that, what happened to  
2 that freezing order?

3 A: Well, the judge eventually overruled the  
4 injunction and said, hay we better wait  
5 and see what is happening in Jamaica but  
6 it destroyed the company because if you  
7 get an injunction against a company and  
8 you freeze its assets, that company  
9 cannot survive and of course it  
10 destroyed me, my professional career, my  
11 business career and you know I feel that  
12 I have been persecuted at levels which I  
13 wish not to describe because it is so  
14 hurtful, over four thousand days of  
15 legal battle with FINSAC using the iron  
16 fist of this case to crush me, that is  
17 how I feel.

18 Q: Okay. Is there anything else you want  
19 to say in conclusion Dr. Chen-Young?

20 A: I think that that is enough for the time  
21 being, there is much more that I can add  
22 but I thank you for the opportunity, and  
23 to the Commissioners, I thank for the  
24 opportunity and I hope that it will help  
25 them in their deliberations and I stand

1 ready to answer any questions.

2 MR. SMALL: Thank you Dr. Chen-Young.

3 COMM. BOGLE: Mr. Small, at this time I think it might  
4 be a good time for us to have lunch, 12  
5 o'clock yes, and then after lunch we  
6 will go into the questions.

7 MR. SMALL: We will resume at 1:00?

8 9 10 11 12 13  
14 COMM. BOGLE: 1:30.  
therefore at 1:30.

15 A: What time will you resume?  
LUNCHEON ADJOURNMENT

16 MR. SMALL: One and a half hour for lunch, we have  
ON RESUMPTION:  
17 long lunches here.  
COMM. BOGLE: Ladies and gentlemen, this enquiry is  
18 A: One hour and half hours for lunch?  
now back in session. Dr Chen Young,

19 COMM. BOGLE: Thank you very much. We will resume  
~~please be reminded that you are still~~  
20 under oath.

21 DR. CHEN-YOUNG: Yes, sir.

22 COMM. BOGLE: Mr. Small, you were through with him?

23 MR. SMALL: I was through, Mr. chairman.

24 COMM. BOGLE: And have we got persons wishing to  
25 cross-examine?

1 MR. HYLTON: I do sir, I don't know if Mr. Levy was  
2 planning to.  
3 Dr Chen-Young.

4 RE--EXAMINATION OF DR. CHEN-YOUNG BY MR.  
5 HYLTON

6 DR. CHEN-YOUNG: Yes, sir.

7 Q: Good afternoon sir, how are you?

8 A: I am fine, thank you.

9 Q: Because we weren't - this is Michael  
10 Hylton. I am not sure if you can see me;  
11 the camera doesn't seem to be on me.

12 A: I can't see you at all, the camera is  
13 not on you.

14 Q: For some reason they have the camera on  
15 Mr. Levy. (laughter)  
16 Dr Chen-Young, I wasn't allowed an  
17 opportunity to have someone in your  
18 location so I'll have to ask you some  
19 questions and I suppose accept your  
20 responses. Could you tell us, Dr  
21 Chen-Young, what documents you have  
22 there with you?  
23 A: It is the submission to you, submitted  
24 to you, to the Commission.  
25 Q: That's it?



1 A: That's it.

2 Q: So each time we see you raise your  
3 glasses and look down that's what you  
4 are looking at, the submission?

5 A: Yes.

6 Q: Did you follow the proceedings of this  
7 Commission over the last few months?

8 A: On and off.

9 Q: Did you, for example, get copies of  
10 transcripts?

11 A: No.

12 Q: Did you get copies of any of the  
13 documents submitted to the Commission by  
14 other persons?

15 A: No.

16 Q: I am asking you questions here today on  
17 behalf of the Bank of Jamaica so I am  
18 particularly interested in the exhibits  
19 put in by the Bank of Jamaica.

20 Mr. Chairman, normally I would hand the  
21 document to the witness. What I propose  
22 to do in the circumstances, with your  
23 leave, is to give copies of any document  
24 to the Commissioners and to Mr. Small  
25 and then proceed.

1       COMM. BOGLE:            Yes.

2           Q:                    Now, Dr Chen-Young, your submission  
3                                   starts, as it should logically, with a  
4                                   chapter dealing with the economic  
5                                   environment, setting the backdrop, if  
6                                   you will, to what happened later in the  
7                                   decade.

8           A:                    Yes.

9           Q:                    And I am sure you would agree with me  
10                                   that since this is the premise on what  
11                                   follows is to be built it is important  
12                                   to get this, right?

13          A:                    Yes.

14          Q:                    Let's start, Dr Chen-Young, with the  
15                                   first page of your text at page two.

16          A:                    Page what?

17          Q:                    Page two of your submission. The first  
18                                   factual assertion that you make at the  
19                                   end of page two is, **there was no**  
20                                   **economic growth between 1990 and 1998.**

21                                   And, you are referring to GDP?

22          A:                    I am not seeing clearly what you are  
23                                   referring to.

24          Q:                    The last line on page two. It says:  
25                                   **First there was no economic growth.** You

1 see it now?

2 A: Yes.

3 MR. HYLTON: Commissioners, have you been handed the  
4 Bank of Jamaica's responses to  
5 questions?

6 A: Yes.

7 Q: In October, 2009, Dr Chen-Young, the  
8 Acting Governor of the Bank of Jamaica  
9 gave evidence before this Commission and  
10 one of the exhibits admitted into  
11 evidence was a document setting out  
12 their responses to a number of questions  
13 asked by the Commission. One of those  
14 documents, or that document includes at  
15 page 41 - I know you don't have it but  
16 your attorney does.

17 MR. SMALL: You are still going to have to read it  
18 to him.

19 MR. HYLTON: Yes. At Page 41, there is a table,  
20 Table 5: Jamaican Selective Indicators,  
21 and that table shows in its first row,  
22 Growth in GDP over the same period  
23 referred to in your submission. What it  
24 indicates, Dr Chen-Young, is that in  
25 1991 there was a growth of 0.7%; 1992

1 -1.4; 1993 -1.5; 1994-1.0; 1995 -0.7; it  
2 then showed negative growth '96, '97,  
3 '98 -1.4, 2.1; 0.7 respectively.

4 It would appear to me, Dr Chen-Young,  
5 that your opening statement that there  
6 is no economic growth between 1990 and  
7 1998 is incorrect. Would you care to  
8 comment on that?

9 A: I don't have the figures in front of me  
10 but perhaps if you said virtually no

11 economic growth.

12 Q: Virtually. Although for five years of  
13 that period there was growth, small  
14 growth but growth nonetheless.

15 A: What is that question?

16 Q: Let me move on. On the following page,  
17 your second comment related to  
18 inflationary conditions on this very  
19 important issue of high interest rates.

20 A: Yes.

21 Q: And you said there that there was  
22 average commercial bank lending rate of  
23 51.6% and you are speaking of between  
24 '91 and '97, the sentence that begins  
25 with 'Between 1991 and 1997'.

1 A I am not sure what you are referring to. On  
2 Q: the top of page three, the first paragraph  
3 on page three?  
4 A: Yes.  
5 Q: You see the sentence that begins **Between 1991**  
6 **and 1997?** Does page 3 begin with the words  
7 **Second high inflationary conditions?**  
8  
9 A: Just a minute. I was reading from the  
10 submission.  
11 Q: Could you repeat that please?  
12 A: I said I was reading from the submission but  
13 in letter form, not the actual document,  
14 which would be the same. Can you begin the  
15 sentence so I can try and follow it?  
16 It is the paragraph immediately following  
17 Q: the one you read earlier. It begins:  
18 **Second, high inflationary conditions.**  
19 Okay, I have that.  
20 Could you tell me what page you have that  
21 A: on, just for future reference? What are  
22 Q: you asking?  
23 On what page do you have that sentence?  
24 A:  
25 Q:

1           A:           Page two. I am working from the original  
2                           draft because I do not have the final  
3                           version in Vancouver, it is  
4                           substantially - maybe a page different  
5                           so we can adjust to that. Give me the  
6                           paragraph.

7           Q:           Your second sentence begins '- **Between**  
8                           **1991 and 1997**'?

9           A:           Yes.

10          Q:           Then it refers to rate of inflation,  
11                           commercial bank lending rates?

12          A:           Yes.

13          Q:           And then continues: **The Jamaica**  
14                           **Government Treasury Bill rate was about**  
15                           **50%, etc.**

16          A:           Yes.

17   MR. HYLTON:       Commissioners, there is a loose document  
18                           in the bundle I have just handed to you,  
19                           it is not actually part of the exhibit.  
20                           Dr Chen-Young, I suggest to you that  
21                           during the period referred to in your  
22                           submission, that is, 1991 to 1999, the  
23                           following were Treasury Bill yields,  
24                           Government of Jamaica during that  
25                           period.

1 November, 1991, 185 days maturity -  
2 36.76%; December, 1991, 91 day maturity  
3 - 38.42%; July, 1992, 187 days --  
4 42.23%; December 1992, 90 days --  
5 24.63; December, 1993, 182 days  
6 -48.97%; December, 1994, 143 days -  
7 29.41%; December, 1995, 185 days -  
8 42.5%; December 1996, 182 days - 28.83%;  
9 December 1997 182 days -- 28.08%;  
10 December 1998, 182 days - 23.52%;  
11 December 1999, 183 days - 22.03%.

12 And I suggest Dr. Chen-Young, that in  
13 fact at no time during that period did  
14 the yield get to 50; it got to 48.97 and  
15 the average was in the 30s.

16 A: I would have to refer to my notes, I  
17 don't have them here in Vancouver.

18 Q: Where did your figures come from?

19 A: I would have to refer to my notes, I  
20 don't have them here in Vancouver.

21 Q: Do you recall where these figures come  
22 from? it didn't come from your notes.  
23 It came from somewhere before it got in  
24 your notes.

25 A: It must be either from the Bank of

1 Jamaica report, Annual Economic Report.

2 Q: But you don't recall now where you got  
3 them from?

4 A: I don't recall now.

5 Q: I suggest to you, Dr.Chen-Young, that  
6 what I have just indicated to you are  
7 the correct figures during that period  
8 of time and do not at all corroborate  
9 the figures that you put in your  
10 submission as your starting point.

11 A: What is that?

12 Q: I suggest that the figures I have just  
13 quoted to you are the correct Treasury  
14 Bill rates during the relevant periods  
15 and totally contradict the figures you  
16 have included in your submission.

17 A: It is possible, I would have to check my  
18 source.

19 MR. LEVY: Mr. Chairman, this document which Mr.  
20 Hylton is examining Dr Chen-Young on,  
21 **Commission of Enquiry, Bank of Jamaica**  
22 **Response to Questions**, is this something  
23 that evidence has been given, has been  
24 put into evidence before the Commission?

25 COMM. BOGLE: Yes, this document was.



1 MR. LEVY: It is unfortunate that Dr. Chen-Young  
2 was not at least sent by e-mail a copy  
3 of this so he can - we are dealing with  
4 serious statistics and numbers. For  
5 Mr. Hylton to rattle off a series of  
6 percentages over ten years and expect  
7 Mr. Chen-Young to be responsive to them  
8 properly is just not right. I don't know  
9 what you are going to do about it but I  
10 find this offensive.

11 COMM. BOGLE: At this stage I must say that we can do  
12 nothing about that, Mr. Levy.

13 MR. LEVY: I am just saying this piece of paper is  
14 not before Mr. Chen-Young, I am only  
15 seeing it for the first time and it is  
16 just not right to be using statistics  
17 out of this piece of paper or this  
18 bundle of papers to cross-examine Dr  
19 Chen-Young. Dr. Chen-Young's statement  
20 of complaints to the Commission has been  
21 before the Commission, has been  
22 available to the Bank of Jamaica for a  
23 long time. Somebody slipped up  
24 somewhere and this was not provided to  
25 Mr. Chen-Young if he is going to be

1 cross-examined on it.

2 MR. SMALL: May I just add this? Apart from that  
3 document, this is not yet before the  
4 commission?

5 COMM. BOGLE: No.

6 MR. SMALL: And I don't know the basis on which it is  
7 8 9 10 being presented. I don't know the  
authenticity of it, the providence of it and  
it ought to have been made available to Dr.  
Chen-Young for him to comment on  
11 it.

12 MR. HYLTON: May I respond, Chair?

13 COMM. BOGLE: Yes, go ahead.

14 MR. HYLTON: First of all, as the Commissioners will  
15 be aware, I don't know when this  
16 submission was received by the  
17 Commission. My learned friend Mr. Levy,  
18 if I may respond to him first, just said  
19 this has been available to the Bank of  
20 Jamaica for a very long time. This  
21 document was received by the Bank of  
22 Jamaica when Dr. Chen--Young was first to  
23 give evidence a couple weeks ago, I  
24 don't recall the exact date, a few days  
25 before that. It certainly was not

1 available, Commissioners, when the Bank of  
2 Jamaica gave evidence and I make no point  
3 on it except to say we cannot be blamed for  
4 not having addressed these issues before  
5 and for not having indicated what our  
6 response to them would be.

7 Secondly, in relation to what my learned  
8 friend, Mr. Small, has just said about this  
9 latter document, this document is not in  
10 evidence because the Bank of Jamaica, when  
11 it gave evidence and put things in evidence,  
12 did not know this was being said so that it  
13 was not in a position to put it in, we had  
14 no choice but now that Dr. Chen-Young is  
15 giving evidence, to put the figures to him.  
16 The Commissioners have indicated that  
17 witnesses may be recalled later and when Bank  
18 of Jamaica is recalled, if you allow us to  
19 return, these matters will be put into  
20 evidence, but it would be an impossible  
21 situation, Mr. Chairman, if Dr. Chen-Young  
22 is not given an opportunity to comment and  
23 we then come  
24  
25

1 later and put it in. So that surely the only  
2 way to deal with it, given the  
3 circumstances, is for us to indicate the  
4 numbers to him now, whatever documents  
5 there are, and put them in then. Finally  
6 sir, as for this suggestion about sending  
7 him documents in advance;

8 (a) This is cross-examination and so  
9 there is no requirement to do that.

10 (b) We do not have a situation where we had  
11 access, if I may use that word, to Dr.  
12 Chen-Young before. In other words we have  
13 nobody there where he is. I knew this  
14 morning when I got here that Mr. Small would  
15 be his counsel; I had no way of communicating  
16 with him and so to suggest that it is somehow  
17 improper to be cross-examining on  
18 documents, some in evidence, which my friend  
19 Mr. Levy says I should have sent to Dr.  
20 Chen-Young, documents which are in  
21 evidence, I reject completely.

22 May I ask, sir, that I be allowed to  
23 continue.

24 Mr. Chairman, I wasn't saying Mr. Hylton

25 MR. LEVY:



1 down the numbers.

2 COMM. BOGLE: So it's being put it?

3 MR. HYLTON: No, sir, it is just for the purpose of

4 your having something to look at.

5 COMM. BOGLE: Okay, we will proceed.

6 MR. HYLTON: Dr. Chen-Young you are with me?

7 A: Yes, I am here.

8 Q: There is repeat reference in your

9 submission to devaluation, inflation and

10 so on, and you refer to it in the

11 context of the decade. Would I be

12 correct to say that the first five years

13 of the decade of the 1990s had severe

14 inflation and devaluation and the last

15 five years had relatively stable

16 exchange rates, price stability. Would

17 that be correct to say, do you recall?

18 A: I don't recall the figures as

19 experienced then, I cannot recall all

20 that detail.

21 Q: I am deliberately not putting figures to

22 you since I am accused of throwing

23 figures at you.

24 A: What is that?

25 Q: I am deliberately not putting the

1 figures to you. Would you agree with me  
2 that as a general statement it is  
3 correct to say the second half of the  
4 decade was characterised by stable  
5 prices and exchange rate as against the  
6 first half?

7 A: I am unable to say, I don't have the  
8 figures in front of me.

9 Q: Okay. Let's continue now, Dr.  
10 Chen-Young, to the specific criticisms  
11 that you make in your submission. Let  
12 us look for example at what I have as  
13 page 13. To assist you it is in Chapter  
14 two under the heading **The Banking**  
15 **Industry**, and you list a number of what  
16 you say are factors and I am at Factor  
17 6.

18 A: Which paragraph are you referring to?

19 Q: The paragraph beginning 'Sixth, an  
20 overlooked...`

21 A: I am Sorry, I don't see the paragraph.

22 Q: Do you see a number of paragraphs that  
23 begin first, second, third, fourth, etc.  
24 in chapter two?

25 A: I am sorry, I still don't follow. I am

1 looking under the banking industry, can you  
2 tell which paragraph it comes under, under  
3 the Banking Industry.

4 Q: Under the Banking Industry the fifth  
5 paragraph starts with the word 'First'.

6 A: Yes.

7 Q: Continue until you see the paragraph  
8 starting with the word Sixth.

9 A: Yes.

10 Q: Found it?

11 A: Yes.

12 Q: Okay. Now that paragraph refers to then

13 Governor Bussieres?

14 A: Yes.

15 Q: You quote in your book, quoting

16 Mr. Bussieres' comments on public  
17 speeches and talk shows?

18 A: Yes.

19 Q: But, at the time you did not need to

20 listen to talk shows and public  
21 speeches, you as a banker, you did not need  
22 to listen to those sources to get Governor  
23 Bussieres' views?

24 A: What you mean I did not need to listen. Do  
25 you recall something called The



1 Bankers' Committee?

2 A: Yes.

3 Q: Who was Silbert Samouge?

4 A: Manager Director, Eagle Commercial Bank.

5 Q: Was Silbert Samouge Eagle Commercial  
6 Bank's representative on the Bankers'  
7 Committee?

8 A: Yes.

9 Q: And the Bankers' Committee was then  
10 chaired by the Governor of the Bank of  
11 Jamaica?

12 A: Yes.

13 Q: During the period leading up to the  
14 issues being investigated, let us say  
15 1993 to 1995, did the Bankers' Committee  
16 meet regularly?

17 A: What is that question?

18 Q: Could you repeat?

19 A: I did not hear whether it is a question  
20 or comment.

21 Q: It is a question. During the period  
22 1993 to 1995 did the Bankers' Committee  
23 meet regularly?

24 A: Yes, I think so.

25 Q: And as far as you are aware, did the

1 Governor communicate his views and  
2 concerns to representatives of financial  
3 institutions at those meetings?

4 A: I don't recall that.

5 Q: Did Mr. Samouge report back to the bank  
6 on what happened at meetings?

7 A: I don't recall a specific report from  
8 Mr. Samouge.

9 Q: There was a meeting on October 25, 1994,  
10 do you recall that at that meeting the  
11 Governor warned bankers about the recent  
12 proliferation of new building societies?

13 A: I do not recall getting any such report.

14 Q: There was a meeting on March 14, 1995.  
15 The dates are important so please pay  
16 attention to them.

17 A: I did not attend, sir.

18 Q: You haven't heard the question yet, Dr  
19 Chen-Young.

20 At the meeting on March 14, 1995, do you  
21 recall that Governor Bussieres warned  
22 about the rapid rate of growth of  
23 foreign currency loans in the banking  
24 system during 1994; warned banks to  
25 ensure that the foreign currency assets

1 were truly liquid?

2 A: I do not recall that, I was not at that  
3 meeting.

4 Q: Okay. At a meeting July 18, 1995 do you  
5 recall the Governor warning about  
6 lending...

7 Mr. Hylton, if you are going to ask the  
8 witness to recall, you have to establish  
9 that he was at the meeting.

10 MR. HYLTON: Then he can say whether he was or was  
11 not there.

12 MR. SMALL: But then we are going to constantly go  
13 through this. He has said he can't  
14 recall Mr. Samouge reported to him and  
15 then you are going to go through each  
16 and every one of these without either  
17 establishing that it was said, or that  
18 Mr. Samouge was there or that Mr.  
19 Samouge reported to Mr. Chen-Young.

20 MR. HYLTON: First of all I am not going to go  
21 through each and every one; and  
22 secondly, Dr Chen-Young can indicate  
23 whether he knows or not. And I am sure  
24 Mr. Chairman, that you will stop me if  
25 you believe I have gone too far.

1     COMM. BOGLE:            I believe the objection is well founded  
2                               because he already said that he wasn't  
3                               at the meetings and he could not recall  
4                               whether Mr. Samouge made any report to  
5                               him about that and I think you have gone  
6                               through about three meetings so far with  
7                               the same result.

8     MR. HYLTON:            I have only done two, sir.

9     COMM. BOGLE:            Two, but I think you could move on.

10    MR. HYLTON:            So you are not allowing me to ask any  
11                               further questions?

12    COMM. BOGLE:            Not regarding those meetings.

13    MR. HYLTON:            I will accept your ruling, sir.

14    COMM. BOGLE:            In view of the fact that he has  
15                               distanced himself from those meetings,  
16                               in other words, he wasn't at the  
17                               meetings and he does not recall getting  
18                               any report from those meetings.

19    MR. HYLTON:            I'll accept your ruling sir.  
20                               You say, Dr Chen-Young, that public  
21                               speeches were made so let's talk about  
22                               the public speeches because you heard  
23                               those?

24            A:                I am sorry, what is that?

25            Q:                I take it that you heard the public

1 speeches; you didn't hear what happened  
2 at the meeting but you heard the public  
3 speeches?

4 A: From time to time, yes, that is correct.

5 Q: Now what you said in your submission is  
6 that there is a criticism of financial  
7 conglomerates but you don't give any  
8 indication of the context in which the  
9 criticism was made?

10 A: That is correct.

11 Q: I am now going to hand him, Mr.  
12 Chairman, a number of documents starting  
13 with three speeches by the Governor,  
14 three public speeches. To save time Mr.  
15 Chairman, I have handed in three  
16 separate documents to you but I am  
17 referring to the first.

18 Dr. Chen-Young, on July 4, 1985 the  
19 Governor gave a speech to the Fourth  
20 Annual Advanced Executive Development  
21 Programme which I understand was carried  
22 in the media.

23 A: Who made that speech?

24 Q: Governor Bussieres. I am going to read  
25 part of the speech to you so you can

1 tell me whether this is one of the speeches  
2 that you heard because it deals with the  
3 issue that you raised; Conglomerations.  
4 On the fourth Page of that document - Mr.  
5 Chairman, it has 82 at the bottom, the  
6 penultimate paragraph. This is what the  
7 Governor said:

8 **It should be noted that since insurance**  
9 **companies own banks and that banks own**  
10 **insurance companies, it is crucial that the**  
11 **corporate veil be pierced and that they be**  
12 **examined on a consolidated basis. It is only**  
13 **in doing so that you can really get a true**  
14 **picture of a financial conglomerate. Because**  
15 **banks and insurance companies fall under two**  
16 **supervisory authorities, there is need to**  
17 **develop a mechanism that will allow a timely**  
18 **exchange of information, an appropriate**  
19 **consultation and a high degree of**  
20 **coordination among them.** Is that one of the  
21 speeches, one of the criticisms of  
22 conglomerates that you are referring to?  
23  
24  
25

1           A:           I don't think so, I have heard him on  
2                           other talk shows.

3           Q:           I know there are others and I am going  
4                           to go on to others, is this one?

5           A:           I was not thinking specifically of the  
6                           contents of that speech, my memory deals  
7                           with what I heard on talk shows was  
8                           critical.

9           Q:           Would you agree that the concern  
10                          expressed here is a valid concern? You  
11                          want me to read it again? It speaks to  
12                          a situation where insurance companies  
13                          own banks and banks own insurance  
14                          companies and they are regulated by two  
15                          separate authorities, it is important  
16                          that - he used the words 'corporate vale  
17                          be pierced and they be examined on a  
18                          consolidated basis. Did you agree with  
19                          that position?

20          A:           I think so, yes, basically.

21          Q:           That's July 1995. On July 19, 1995 - I  
22                          am, going back to the next one. It  
23                          starts at number 85 at the bottom, Mr.  
24                          Chairman. The Governor gave a speech at  
25                          the Quarterly Luncheon of the

1 Association of Licensed Financial  
2 Institutions. You are aware of that  
3 Association?

4 A: Yes.

5 Q: On the second page of that speech now at  
6 86 at the bottom, Mr. Chairman in the  
7 middle of the page beginning **Since**  
8 **January 1995**. This is what the Governor  
9 said again on this same topic **Since**  
10 **January 1995 we have started to**

11 **supervise interconnected companies of a**  
12 **group on a consolidated basis in order**  
13 **to carry out solvency analysis on the**  
14 **entire group. We have also started to**  
15 **look at entities which do not fall**  
16 **directly *under* our purview as their**

17 **activities can significantly impact on**  
18 **the financial entity. Financial**  
19 **institutions must never forget their**  
20 **fundamental fiduciary responsibility on**  
21 **the basis on which they were granted a**  
22 **licence to operate in the first place.**  
23 **Liberalization must not be taken to mean**  
24 **a free for all, but rather a way of**  
25 **eliminating unnecessary constraints**



1 which hamper fair competition and  
2 financial regulations. However, with  
3 liberalization comes the added  
4 responsibility of ensuring that the  
5 rules of the game are obeyed at all  
6 times.

7 An area of concern to the authorities is the  
8 concentration of risks, the tendency to lend  
9 to customers amounts that are **in excess** of  
10 specific accounts and capital  
11 that is eligible under the law. This  
12 practice takes on another dimension when  
13 these kinds of loans are made to  
14 shareholders, directors, and managers and  
15 to related parties. The Department of  
16 Banking Supervision have been paying very  
17 close attention to this aspect to prevent  
18 flagrant disregard not only of the letter  
19 but the spirit of the law. There are some  
20 people who have developed a great deal of  
21 expertise in recent years in finding ways  
22 of respecting the letter of the law or the  
23 regulations while at the same time  
24 circumventing its intent. While this may  
25 look to be a

1                   **brilliant piece of legal maneuvering**  
2                   **what it does in the end is undermine the**  
3                   **viability, the solvency of the**  
4                   **institution itself as well as the**  
5                   **financial system as a whole."**

6                   Now, that's a fairly long passage. First  
7                   of all, do you recall hearing that  
8                   speech? That sounds familiar?

9           A:           What is the question?

10          Q:           Do you recall hearing those comments?

11          A:           I don't recall that specific speech. My  
12                       comment does not deal with any specific  
13                       speech.

14          Q:           I understand. Do you agree?

15          A:           Mr. Bussieres also appeared on radio  
16                       talk shows and I do not refer to any  
17                       specific speech in that comment.

18          Q:           Would you agree with the concerns  
19                       expressed here that these statements and  
20                       concerns are valid?

21          A:           Yes.

22          Q:           He continues in that same speech to deal  
23                       with Building Societies and this is a  
24                       particular issue that reference will be  
25                       made to again.

1 On the following page, Mr. Chairman, page  
2 88 at the bottom, the very last line, Dr.  
3 Bussieres said: "There are three  
4 principles that are guiding the  
5 authorities in relation to Building  
6 Societies.  
7 First of all, there is the need to protect  
8 the depositors and consequently these  
9 institutions must maintain at all times an  
10 appropriate level of capital and liquid  
11 assets if they are to be in a position to do  
12 any deposits,  
13 withdrawals. It is important for them to be  
14 able to inspire confidence that they are in  
15 a position to do so and the idea of the  
16 supervisory authorities for the protection  
17 of the depositors is  
18 paramount.  
19 The second one concerns the level playing  
20 field. It is a matter of equity and  
21 efficiency that institutions that are  
22 engaged in the same kind of  
23 activities are subjected to the same rules.  
24 There is an old principle that if you walk  
25 like a duck, if you quack like

1 a duck, you must be a duck.  
2  
3 Absence of cash and liquidity and Asset  
4 ratio, no withholding tax. "There was a very  
5 fast rate of growth of deposit liabilities  
6 of the Building Societies. These deposit  
7 liabilities increased by 93 percent  
8 February 1995 over February 1994. Much  
9 faster than the banking system as a whole.  
10 I will read that again.  
11 The deposit liabilities in the Building  
12 Societies increased by 93 percent February  
13 1995 over February 1994. Much faster than  
14 the banking system as a whole." This unequal  
15 treatment has resulted in a plethora of new  
16 Building Societies, 34 at the last count,  
17 compared with about six a few years ago. Now,  
18 given your previous answer about not  
19 referring to specific speeches, I won't ask  
20 you that question, but are you aware and do  
21 you recall that during this period, that is  
22 1994 into 1995 there was a huge increase in  
23 financial groups having a building society?  
24  
25

1 A: Yes.

2 Q: That included Eagle?

3 A: (No answer).

4 Q: And that included Eagle?

5 A: Yes.

6 Q: And that included Century?

7 A: I don't remember. I can't speak for

8 Century.

9 4: What does regulatory arbitrage mean, Dr.

10 Chen-Young?

11 A: Regulatory what?

12 Q: Arbitrage?

13 A: I don't understand that, I have never

14 heard that term.

15 Q: I see. I think that the term means choosing

16 a type of entity in order to get the

17 regulatory regime that is least strict or

18 most favourable. Not a familiar term?

19 No, not to me.

20 A: We will come back to it. Lastly, there is

21 Q: a speech March 8, 1996 and this is a speech

22 that the Governor was making to the 20th

23 Annual General Meeting of the Life

24 Insurance Companies Association of

25

1 Jamaica. On the page Mr. Chairman, that has  
2 143 at the bottom. This is

3 March 1996. This is what the Governor said.

4 "Let me now explore with you the measures  
5 taken by the authorities to help ensure the  
6 soundness of the financial system.

7 I will just pause, Dr. Chen-Young, to point  
8 out there is a point in your submission when  
9 you asked rhetorically what did the Bank of  
10 Jamaica do. And I am reading this both in  
11 relation to the issue we are discussing and  
12 for that, let us now explore the measures  
13 taken by the authorities to help ensure the  
14 soundness of the financial system. It is a  
15 paradox that the more you liberalize, the  
16 more you have to regulate and supervise. The  
17 liberalization of the financial system  
18 requires tighter financial legislation and  
19 more stringent regulations in order to  
20 ensure that supervision is made more  
21 effective. There is a school of thought in  
22 Jamaica which says that **we do not need more**

23

24

25

1                   **regulations, what we need is tighter**  
2                   **supervision.** This **is** a fallacy because you  
3                   can only supervise more tightly if you have  
4                   the legal authority and power to regulate.  
5                   Then I am going skip two paragraphs to "As  
6                   we all know."

7                   As we all know there are many financial  
8                   conglomerates in Jamaica..."

9                   And you can tell me whether this is the one  
10                  now that you recall.

11                 ...where holding companies own a bank, a  
12                 merchant bank, a building society an  
13                 insurance company, a stock brockage firm and  
14                 sometimes a Unit Trust. The holding company  
15                 is owned itself sometimes by the insurance  
16                 company or even a Unit Trust. In order to  
17                 ensure that these institutions are properly  
18                 supervised on a consolidated basis, the  
19                 legislation will need to be amended to ensure  
20                 that the supervisory authorities have  
21                 sufficient authority to pierce through the  
22                 corporate veil and have the capacity to reach  
23                 and examine the ultimate

24

25

1                   shareholder, because any problem in any  
2                   one of these entities will impact upon  
3                   the other members of the group and will  
4                   have a domino effect.

5                   The third reason is the fact that  
6                   financial institutions are engaged in  
7                   many new activities and thus are  
8                   assuming a level of risks that they were  
9                   not taking previously. This is why for  
10                  example, legislation is presently being  
11                  worked on which will have the effect of  
12                  redefining what is a deposit and what is  
13                  securities in order to ensure that all  
14                  financial activities are falling under  
15                  the same form of supervision by the  
16                  authorities.

17                  You agree with those sentiments?

18                  A:                   If I agree with them?

19                  Q:                   Yes.

20                  A:                   I think that was a statement that was  
21                  made.

22                  Q:                   Pardon me?

23                  A:                   And one of the problems with  
24                  Mr. Bussieres is that...

25                  Q:                   Do you agree with those sentiments?



1           A:                   ...he made so many speeches.

2           Q:                   Dr. Chen-Young, all I have asked is

3                               whether you agree with those sentiments?

4           A:                   That's Mr. Bussieres' speech.

5           Q:                   I am asking you whether you, Dr.

6                               Chen-Young, agree?

7           A:                   I agree with regulations but I disagree

8                               in the manner in which Mr. Bussieres

9                               went about making endless speeches which

10                              indirectly affect entities like Eagle

11                              and other conglomerates; that is what I

12                              strongly disagree with. A Governor

13                              should not behave like that.

14          Q:                   Do you agree with...

15          A:                   A Governor should sit down and sort out

16                              problems especially when you have a

17                              fragile financial system.

18          Q:                   Do you agree, Dr. Chen-Young...

19          A:                   And that is the point I am making.

20   MR. SMALL:                Would you allow the witness to finish.

21   MR. HYLTON:              I don't need him to answer a question

22                              that I am not asking.

23   MR. SMALL:                But he is answering your question.

24   MR. HYLTON:              Would you agree with me, Dr.

25                              Chen-Young...

1 MR. SMALL: Mr. Chairman, would you instruct  
2 Mr. Hylton to allow the witness to  
3 finish answering his question.

4 MR. HYLTON: He was not in any way answering my  
5 question.

6 MR. SMALL: He is answering your question.

7 MR. HYLTON: Can I address you, Mr. Chairman?

8 MR. SMALL: Do you rule on that sir?

9 COMM. BOGLE: He was continuing to give a reply to  
10 your question.

11 MR. HYLTON: May I respond, Mr. Chairman, to what my  
12 friend said?

13 COMM. BOGLE: Yes, go ahead.

14 MR. HYLTON: The question which I asked was, do you  
15 agree with the sentiment. He was saying  
16 he didn't agree with the way in which  
17 the regulatory authorities were  
18 behaving. This does not relate at all  
19 to my question.

20 MR. SMALL: Mr. Chairman, you have ruled that he was  
21 answering the question. Mr. Hylton is  
22 challenging your ruling. I ask you to  
23 stand by your ruling to allow the  
24 witness to finish answering the  
25 question. Mr. Hylton has ample

1 opportunity afterwards to address you on  
2 whether he answered the question or not,  
3 but if in fact he is answering it is  
4 improper for Mr. Hylton to stop him.

5 MR. HYLTON: And I am quite sure, Mr. Chairman, you  
6 wouldn't have ruled without hearing me.

7 COMM. BOGLE: Mr. Chen-Young, continue please.

8 A: Yes, the point I was making is that my  
9 comment was about Mr. Bussieres and  
10 appearing on media shows, talk shows  
11 Because that is not the way a Governor  
12 should behave when you are dealing with  
13 a young  
and fragile financial system.

14 When you do that then it impacts  
15 negatively on entities, especially new  
16 entities and that the proper way to go  
17 about it is to have the legal structure  
18 and the regulatory structure in place to  
19 deal with these entities in a proper  
20 manner rather than broadcasting as  
21 Mr. Bussieres was prone to do; he was on  
22 talk shows so frequently, and this must  
23 have impacted on entities like Eagle.  
24 And many of the questions which were

25

being posed to me are somewhat

1 tautological; do you beat your wife?  
2 What, am I to expect?  
3 COMM. BOGLE: Okay Mr. Chen-Young.  
4 MR. HYLTON: Can I proceed now sir?  
5 COMM. BOGLE: Yes, sir.  
6 MR. HYLTON: In the passage that I have just read,  
7 Dr. Chen-Young, Governor Bussieres  
8 raised a number of concerns. One of  
9 those is:  
10 **"There are many financial conglomerates**  
11 **in Jamaica where holding companies own a**  
12 **bank, a merchant bank, a building**  
13 **society, and insurance company a stock**  
14 **brockage firm and sometimes even a unit**  
15 **trust and so on. And he said that in**  
16 **order to ensure that these institutions**  
17 **are properly supervised effectively we**  
18 **need to pierce the corporate veil and**  
19 **have the capacity to reach and examine**  
20 **the ultimate shareholder.**  
21 Do you agree with that statement?  
22 A: I will respond as follows.  
23 Q: Can I just say something, Mr. Chairman?  
24 A: It is important that...  
25 COMM. BOGLE: Just a minute Mr. Chen-Young.

1 MR. HYLTON: I understood your previous ruling and if  
2 he is allowed to make another speech I  
3 will have to ask him the question again  
4 because I really do need an answer to  
5 the question. It is a yes or no  
6 question.

7 COMM. BOGLE: Dr. Chen-Young, can you try to answer  
8 the question in short order, can you  
9 answer it more directly.

10 MR. HYLTON: Do you agree or disagree, that's the  
11 question?

12 A: I will say yes and no and I will  
13 explain. There are two schools of  
14 thought about financial conglomerates.  
15 One school of thought is that there  
16 should be a 'Chinese wall' - 60 meters  
17 drawn between banks, insurance  
18 companies, security firms et cetera.  
19 The other school of thought was that  
20 there are efficiencies and economies of  
21 scale to have conglomerates. And in  
22 fact, in the 1990s the laws in the US  
23 were amended to allow for conglomerates.  
24 That is a fact, and so what we were  
25 doing in Jamaica in terms of financial

1 conglomerates was in keeping with the  
2 trend at that time.

3 Mr. Bussieres with his Canadian  
4 experience was not in favour of that  
5 school of thought. Maybe under  
6 reflection he was right, but the Act was  
7 amended to allow financial  
8 conglomerates.

9 And so in answer to the question I say  
10 yes and no, bearing in mind the two  
11 schools of thought about the efficacy  
12 and the appropriateness of financial  
13 conglomerates. We in Jamaica and  
14 certainly at Eagle believed that it made  
15 sense. For example, we have a Merchant  
16 Bank, the Merchant Bank had no chequing  
17 account...

18 MR. HYLTON: Mr. Chairman, that does not relate to my  
19 question.

20 A: I have answered your question.

21 MR. HYLTON: Are we planning on finishing today?

22 COMM. BOGLE: Mr. Chen-Young, please stop the  
23 speeches. Go ahead now Mr. Hylton.

24 MR. HYLTON: Thank you, Mr. Chairman.

25 Dr. Chen-Young, I am not really

1 interested in the two schools of thought  
2 or what the American thinks or what the  
3 Canadian thinks. I am only interested in  
4 one thing and that's what Dr. Chen-Young  
5 thinks now, and specifically the  
6 sentence that I have just read  
7 specifically said that regulators should  
8 have the authority to reach and examine  
9 the ultimate shareholder. Do you agree  
10 with that?

11 A: Yes.

12 MR. HYLTON: On the page with 145 at the bottom, Mr.  
13 Chairman, in the middle paragraph  
14 beginning "events", and this by the way  
15 was Governor Bussieres' last speech.  
16 This is March 1996. **"Events in recent**  
17 **times have clearly demonstrated that not**  
18 **everyone that works in the financial**  
19 **system shares the same philosophy. It**  
20 **is quite clear to say the least that**  
21 **some have a confused view of what is**  
22 **meant by a fiduciary responsibility.**  
23 **They have exhibited a tendency to**  
24 **believe that depositors' money is their**  
25 **money and have in the process lent to**



1 themselves large sums of money to  
2 purchase real estate or other assets in  
3 pursuit of their own selfish ambitions.  
4 They have repeatedly violated the law in  
5 full cognizance of it and quite often  
6 they have been supported in their  
7 endeavors by some members of the legal  
8 and accounting professions. Their  
9 behaviour has endangered the position of  
10 their depositors or policy holders and  
11 have shown discredit to all the upright  
12 citizens working in the financial  
13 system. There should be no difference  
14 between those who commit white collar  
15 crime with someone who steals money,  
16 both have committed an offence and can  
17 only condone such activities either  
18 lacks judgment or integrity. Do you  
19 agree with those sentiments?

20 A: Are you referring to me whether these  
21 statements apply to me and Eagle?

22 Q: Not at all, not relating to you.

23 A: I don't understand the nature of the  
24 question.

25 Q: Do you agree with the sentiments for

1 example, there should be no difference  
2 between those that commit a white collar  
3 crime and someone who steals money. Do  
4 you agree with that statement?

5 A: Please repeat it, I am not hearing you  
6 very clearly.

7 Q: There should be no difference between  
8 those that commit a white collar crime  
9 and someone who steals money.

10 A: If there is a crime, there is no  
11 difference in crime, that's all, once a  
12 crime is committed.

13 Q: Let me summarize what I understand to be  
14 one of the points being made here. That  
15 the practice of persons managing deposit  
16 taking institutions lending money to  
17 themselves in breach of their financial  
18 fiduciary responsibility is illegal and  
19 I think what he calls white collar  
20 crime. Do you agree with that?

21 A: If it is illegal, then they should be  
22 punished.

23 Q: The concerns raised by Dr. Bussieres in  
24 relation to conglomerates in the context  
25 that he has explained in these speeches



1 entity?

2 A: I don't know the details and I am not  
3 going to comment on them.

4 Q: Okay, So you comment on it in your  
5 submission but you are not answering  
6 questions on it, is that it? Are you  
7 aware Dr. Chen-Young, that Mr. Crawford  
8 went to the Privy Council twice in  
9 relation to the regulatory action taken  
10 against Century.

11 A: I am not getting a good sound, please  
12 repeat. Again, I am sorry.

13 Q: Are you aware that Mr. Donovan Crawford  
14 appealed to the Privy Council twice in  
15 relation to the regulatory action taken  
16 against Century?

17 A: I don't know the grounds on which he  
18 appealed.

19 MR. SMALL: Mr. Chairman, can anything useful be  
20 gotten from this witness in relation to  
21 Century National's litigation?

22 COMM. BOGLE: Mr. Hylton may have to explain the  
23 reasoning or the worth of that line of  
24 questioning regarding Dr. Chen-Young's  
25 submission.

1 MR. HYLTON: I am being given some direction, sir,  
2 from the technical team. On page 31 of  
3 the submission, Mr. Chairman, Dr.  
4 Chen-Young says:  
5 **Tenth: The Commission should examine**  
6 **the basis on which FINSAC decided to**  
7 **selectively bring lawsuits against only**  
8 **a few persons who were substantial**  
9 **owners of failed financial institutions**  
10 **(e.g. Panton, Crawford, Fullerton and**  
11 **Chen-Young.**  
12 That is one of a number of references in  
13 this document to litigation against  
14 Mr. Crawford.  
15 A: That was an error, that was an error.  
16 MR. HYLTON: Mr. Chairman, could you please stop him  
17 until I address you?  
18 COMM. BOGLE: Yes.  
19 MR. HYLTON: It would be entirely wrong, if I  
20 respectfully say so, for the witness to  
21 be allowed to put in a submission,  
22 refers to a litigation and then he  
23 refuses to answer any questions in  
24 relation to it. If it is relevant for  
25 the purpose of his submission, it surely

1 must be relevant for the purpose of  
2 cross-examination. That's one. Two: The  
3 witness has criticized Governor  
4 Sussieres for raising a particular  
5 complaint to the extent that judgments  
6 of our courts have commented on that  
7 complaint or similar, that it seems to  
8 me Mr. Chairman would surely be a matter  
9 in which the Commission may have an  
10 interest.

11 MR. SMALL: Mr. Chairman, as regards the second  
12 point, that has not yet been established  
13 or the relevance of that. I am dealing  
14 with the questions being put to Dr.  
15 Chen-Young concerning the litigation by  
16 Crawford. And I am saying that he is in  
17 no position to be able to comment on  
18 that and if you look at the passage that  
19 has been referred to by Mr. Hylton that  
20 he gives as his basis for saying that he  
21 should be permitted, all that  
22 Mr. Chen-Young has said is that the  
23 Commission should examine the basis,  
24 inviting the Commission to look at that  
25 basis. He is not putting forward any

1 argument, he is simply inviting the  
2 Commission to examine the basis. And to  
3 go into how many times Mr. Crawford went  
4 to the Privy Council; the basis upon  
5 which he went; what was the outcome and  
6 all of that; cannot serve any useful  
7 purpose through this witness.

8 COMM. BOGLE:  
9 MR. HYLTON:

Mr. Hylton?  
I am drawing your attention, Mr.

10 Chairman, to page 31 to which there is a  
11 reference to a number of institutions.  
12 If you look at page 25 there is a point  
13 which starts at page 24 where  
14 discriminatory treatment is alleged. On  
15 page 25 the second paragraph reads: **Not**  
16 **only were a select group of investors**  
17 **discriminated against by taking away**  
18 **their companies, but in certain cases,**  
19 **notably Mr. Don Crawford and me,**  
20 **aggressive legal prosecution was meted**  
21 **out.**  
22 Now, what Dr. Chen-Young has  
23 done now is narrowed the group  
24 to two, two of us are treated in  
25 a particularly wrong

1 discriminatory way by legal  
2 action being taken. He has gone  
3 on Mr. Chairman, and your  
4 members, in this document to  
5 say, a point that will be dealt  
6 with later, that the grounds  
7 brought against him that he  
8 succeeded in are so and so and  
9 there are others that did not  
10 succeed, et cetera. To the  
11 extent that he puts together in  
12 this paragraph himself and  
13 Mr. Crawford in that unique  
14 group of discriminated against  
15 persons and persons subject to  
16 arbitrary aggressive legal  
17 prosecution, I submit that  
18 questions in relation to what  
19 happened with this arbitrary  
20 selected legal prosecution must  
21 be relevant.

22 COMM. BOGLE: I will allow the question.

23 MR. HYLTON: Thank you, sir.

24 The question Dr. Chen-Young - again,

25 am just asking you for what you are



1                   aware of, because if you are not aware  
2                   of it then you are not aware. Are you  
3                   aware that Mr. Crawford appealed to the  
4                   Privy Council twice?

5           A:                   I don't know how many times.

6           Q:                   Okay. Mr. Chairman, I am looking at the  
7                   Judgment of the Privy Council Century  
8                   National Merchant Bank and Trust Company  
9                   Ltd and others. It says 1998 - A.C. 628.  
10                  I am looking, Dr. Chen-Young, at a  
11                  Judgment of the Privy Council in 1998,  
12                  this is the First Appeal and at page 5  
13                  of the document the Judgment begins, at  
14                  the top of the page it says the Judgment  
15                  of their Lordships was delivered by Lord  
16                  Steyn. And it starts by indicating the  
17                  factual background which I think would  
18                  be very similar to what we are  
19                  discussing.

20                  **"These appeals from orders made by the**  
21                  **Court of Appeal of Jamaica on 2nd June,**  
22                  **1997 concern the lawfulness of action**  
23                  **taken by the Minister of Finance on 10th**  
24                  **July 1996 under statutory powers to**  
25                  **assume temporary management of three**

1 financial institutions and the remedies  
2 available to aggrieved parties in the event  
3 of unlawfulness.

4 The three financial institutions were:  
5 Century National Bank, a bank licensed under  
6 the Banking Act: Century National Merchant  
7 Bank and Trust Company, a Merchant Bank  
8 licensed under the Financial Institutions  
9 Act: Century National Building Society, a  
10 Building Society, licensed under the  
11 Building Societies Act.

12 Now, let me pause here. in relation to  
13 14 the Eagle Group,  
did the Group also

15 include a bank licensed under the  
16 Banking Act, Dr. Chen-Young?

17 A: I didn't hear the question.

18 Q: Did the Eagle Group also include a bank  
19 licensed under the Banking Act?

20 A: A bank what?

21 Q: Licensed under the Banking Act?

22 A: Eagle Commercial Bank.

23 Q: So the answer is yes?

24 A: And what else?

25 Q: So the answer is yes?

1 A: Yes.

2 Q: Did it also include a Merchant Bank  
3 licensed under the Financial  
4 Institutions Act?

5 A: Yes.

6 Q: Did it also include a Building Society  
7 licensed under the Building Societies  
8 Act?

9 A: Yes.

10 Q: I will continue.

11 **"Mr. Donovan Crawford, together with his**  
12 **mother, held a controlling interest in**  
13 **all three financial institutions. The**  
14 **boards of directors and the three**  
15 **institutions were virtually the same and**  
16 **they shared management services and**  
17 **staff. For several years before July**  
18 **10, 1996 the three institutions**  
19 **experienced serious financial and**  
20 **managerial problems. In the view of the**  
21 **Bank of Jamaica the operations of these**  
22 **entities were characterized by unsafe**  
23 **and unsound practices. Despite**  
24 **undertakings to remedy matters, the**  
25 **position in the view of the Bank of**

1           **Jamaica became progressively worse. During**  
2           **this period the institutions were heavily**  
3           **dependent on support provided by the Bank of**  
4           **Jamaica.**

5           That is the Privy Council Summary of the  
6           actual background. There are various  
7           findings made and I am not going to take you  
8           through all of them but if I may turn Mr.  
9           Chairman, to the page numbered page 10. And  
10          what had happened in that case Dr.  
11          Chen-Young, indeed with Eagle, is that,  
12          certain recommendations were made by the  
13          Bank of Jamaica.

14          There is a section headed "**Other**  
15          **Issues.**" In the Appellants' written  
16          **case...**

17          That's Mr. Crawford's and so on.

18                 **.it was argued that the validity of the**  
19                 **recommendation made by the Bank of Jamaica**  
20                 **to the Minister under section 25 (1) was open**  
21                 **to doubt because the Bank of Jamaica had a**  
22                 **conflict of interest. Counsel for the**  
23                 **appellants did not address their Lordship**  
24                 **orally on this argument. That is**  
25                 **understandable since**

1                   there is nothing whatsoever to suggest  
2                   that the Bank of Jamaica failed to carry  
3                   out its statutory functions properly.  
4                   There was no conflict of interest: the  
5                   Bank of Jamaica was, and had to be  
6                   guided only by the public interest.  
7                   Their Lordships reject the written  
8                   argument on this point as wholly  
9                   unsustainable.

10                  Would you agree with me Dr. Chen-Young,  
11                  that the Privy Council concluded that  
12                  there was a basis for the Bank of  
13                  Jamaica's recommendations in proceeding  
14                  as they did?

15                  A:                   How can I disagree with that?

16                  Q:                   Let's turn to Eagle, I think your lawyer  
17                  wants you to talk about Eagle, not about  
18                  Century, so let's talk about Eagle and  
19                  let us go now Dr. Chen-Young to the  
20                  evidence that has been given before this  
21                  Commission as to why an action was taken  
22                  against Eagle. I could ask Mr. Chairman  
23                  that we look at the Bank of Jamaica's  
24                  response to submissions in particular,  
25                  at page 17(b), page 17, paragraph

1 numbered (b). Now Dr. Chen-Young, I am  
2 going to read to you from the evidence  
3 given by the Acting Governor, Bank of  
4 Jamaica to this Commission.

5 **The formation of conglomerates (often**  
6 **mixing financial and real sector**  
7 **businesses) which also resulted in**  
8 **excessive and non-arms length connected the**  
9 **party transactions and which sought to take**  
10 **advantage of deferring legislative *regimes***  
11 **across types of entities (which were**  
12 **subject to**  
13 **different standards of regulation).**

14 She is giving that as one of the reasons for  
15 the problem that financial entities found  
16 themselves in.

17 **These conglomerates were structured to**  
18 **obfuscate regulatory scrutiny of the**  
19 **transactions between group companies. For**  
20 **example, in the case of the Eagle**  
21 **Financial Entities (EFEs), an**  
22 **application was made to the Minister of**  
23 **Finance regarding the restructuring of**  
24 **Eagle Financial Group that would vest the**  
25 **ownership of the deposit taking**

1                   **entities of the Group in the Eagle**  
2                   **Premium Growth Fund(a unit trust) .**

3                   We pause there. Is that true? You want  
4                   me to read it again?

5           A:           I don't know what recommendation was  
6                   made by the Ministry of Finance.

7           Q:           No, no, it doesn't say anything about  
8                   recommendation. It says: "**An application**  
9                   **was made to Minister of Finance**  
10                  **regarding the restructuring of Eagle**  
11                  **Financial Group that would vest the**  
12                  **ownership of deposit taking entities of**  
13                  **the Group in the Eagle Premium Growth**  
14                  **Fund (a unit trust) .**

15                  Is that true?

16          A:           That's correct.

17          Q:           **It was subsequently discovered that**  
18                  **ultimate ownership of the Group had also**  
19                  **been restructured where ownership of**  
20                  **the holding company Crown Eagle had been**  
21                  **transferred from majority shareholder**  
22                  **Paul Chen-Young, such that Eagle Group**  
23                  **was ultimately held by Jellapore**  
24                  **Investments (a blind offshore trust**  
25                  **registered in the Cayman Islands) .**

1 Is that true?

2 A: That is correct under the law, it was  
3 done under the law when the Bank Act was  
4 amended.

5 Q: **This ultimate holding structure was *not***  
6 **disclosed to the authorities and *the***  
7 **result was that the authorities had no**  
8 **supervisory reach to the holding**  
9 **companies under the existing legislation**  
10 **and the ownership responsibilities for**  
11 **and control of the bank and building**  
12 **society in the group legally passed from**  
13 **Mr. Chen-Young to the blind trust.**

14 Is that true?

15 A: No. I informed the Bank of Jamaica  
16 voluntarily that the shares were  
17 transferred and the transfer of these  
18 shares was a part of my estate plan  
19 which was quite legitimate. I  
20 voluntarily informed the Bank of Jamaica  
21 of that transfer.

22 Q: Did you also inform the Bank of Jamaica  
23 who owned Jellapore?

24 A: That's correct, yes.

25 Q: And who was that?





1 Q: You must understand, it is saying it is  
2 within the law you know, it is not  
3 contradictory that -- let me read it  
4 again.

5 **It should also be noted that the**  
6 **ownership of the bank and building**  
7 **society passed without the knowledge and**  
8 **or sanction of the regulatory**  
9 **authorities at a point where the law**  
10 **allowed such passing of ownership**  
11 **without the need for the authorities to**  
12 **even be advised.**

13 So it is not saying it was illegal, it  
14 is saying they didn't know.

15 A: Yes, that's correct, I acted within the  
16 law.

17 Q: And without their knowledge or sanction  
18 under the law?

19 A: I had the right to do that as a  
20 shareholder.

21 Q: I am not now questioning whether you  
22 had the right, I am asking whether this  
23 statement is correct?

24 MR SMALL: Mr Chairman, it surely cannot be correct  
25 if my friend puts to him that it was

1 done without sanction when there was no  
2 need for sanction or permission and that  
3 is what is the 'whip in the tail' of his  
4 question.

5 MR HYLTON: Well, first of all, this is evidence  
6 that's given so that I am entitled to  
7 ask the witness whether he agrees yes or  
8 no. That's the first thing. But  
9 secondly, the fact that no approval was  
10 needed doesn't affect the question of  
11 whether approval was sought or not.

12 MR SMALL: No, but you say without sanction.

13 MR HYLTON: The answer can be no sanction was given  
14 and none was needed, or the answer can  
15 be none was needed but I got it anyway.

16 COMM BOGLE: I got from that answer...

17 MR SMALL: Mr. Chairman...

18 COMM BOGLE: ...that he was saying he had done it and  
19 done it legally.

20 MR SMALL: Yes.

21 COMM BOGLE: So I don't know....

22 MR HYLTON: But that is not the question with  
23 respect, sir.

24 MR SMALL: But that is the question, that is the  
25 issue and he has said that and has been

1 challenged not.

2 MR HYLTON: I didn't interrupt my learned friend  
3 when he was addressing you. My question  
4 is whether he got the sanction of the  
5 Bank of Jamaica. This statement is no  
6 approval was needed but you did it  
7 without my knowledge or approval. Now,  
8 the answer is either yes, that's correct  
9 or no it isn't. There is something else  
10 I am going to come to why it's  
11 important. But this is just a statement  
12 of fact which is either correct or it is  
13 not correct. This is not an issue of  
14 whether it is legal or not, this is a  
15 statement of fact. Did you do it without  
16 approval?

17 MR LEVY: Mr Chairman, it might assist all of us  
18 when we are reading a long paragraph  
19 that Mr. Hylton would ask simple  
20 questions and not compound questions.  
21 Because when you ask if something was  
22 done without approval and without  
23 sanction and if sanction is not  
24 necessary, that's a compound question  
25 and it's not one answer that suits that.

1 MR HYLTON: I think that Mr. Small, Dr. Chen-Young  
2 and yourselves should understand the  
3 question. I assume Mr Levy does not  
4 understand.

5 MR SMALL: No, Mr. Levy accurately summarizes my  
6 objection. It's an unfair question  
7 particularly when pursued after the  
8 witness has made it quite clear that he  
9 did what he did by law and lawfully. To  
10 then go back and ask him, did he do it  
11 without sanction, it's to suggest that  
12 sanction was necessary.

13 MR HYLTON: Mr Chairman...

14 COMM BOGLE: Yes, thank you.

15 MR HYLTON: I will move on, there are many more  
16 important things to come. Continuing  
17 Dr. Chen-Young and just to remind you,  
18 this is the evidence the Bank of Jamaica  
19 gave in relation to Eagle.

20 **"Because the existing laws contemplated**  
21 **supervisory reach/scrutiny only in**  
22 **relation to immediate holding companies,**  
23 **the insertion of both a unit trust and**  
24 **an offshore trust into ultimate**  
25 **ownership structure allowed the Eagle**

1                   **Financial Entities to frustrate and**  
2                   **successfully resist the Supervisor's**  
3                   **attempt to scrutinize the activities of**  
4                   **the entities at the top of the corporate**  
5                   **group structure, including those of**  
6                   **CEL. "**

7                   Would you like to comment on that? That  
8                   is Eagle Crown Life?

9                   A:                I didn't...

10                  Q:                Pardon?

11                  A:                I agree totally with that. All the  
12                                entities were supervised. All the  
13                                entities were regulated and all  
14                                inspections were done on all the  
15                                entities, I disagree totally.

16                  Q:                Finally:

17                               **In addition the use of the Jellapore**  
18                               **Trust to hold the Eagle Financial**  
19                               **Entities also allowed the de facto**  
20                               **owners of Eagle Financial Entities to**  
21                               **argue that they had no influence or**  
22                               **control and were not in fact responsible**  
23                               **as owners and thus were not liable to**  
29                               **provide the necessary financial support**  
25                               **to assist the group in times of crisis.**



1 Let me try and find a neutral word.

2 A: Yes, that's correct.

3 Q: I suggest Dr. Chen-Young that the  
4 account of that meeting here leaves out  
5 something very important. One of the  
6 very important issues at that meeting  
7 was this issue about who owned the Eagle  
8 Group, who owned Jellapore.

9 A: I don't recall that.

10 Q: That was the sticking...

11 A: And there were no minutes of that  
12 meeting.

13 Q: That was the sticking point at which  
14 that meeting ended. You are saying what  
15 this evidence says, you argued that you  
16 had no influence or control and could  
17 not give information to the Bank of  
18 Jamaica about Jellapore.

19 A: Any information that's requested that I  
20 was in a position to give I gave.

21 Q: No, I mean..

22 A: I do not recall that issue being  
23 discussed but if it was discussed and I  
24 could have complied I would have  
25 complied.



1 MR SMALL: Just that moment.

2 A: In other words, the Bank of Jamaica did  
3 not say to us, listen, we do not like  
4 what's happening with Jellapore.

5 COMM BOGLE: Just a minute, Dr. Chen-Young.

6 MR SMALL: I am enquiring Mr. Chairman, because I  
7 was not here when the Bank of Jamaica  
8 gave evidence. Did the Bank of Jamaica  
9 give evidence of what Mr. Hylton is now  
10 suggesting to this witness? Because it  
11 certainly is not contained in the  
12 passage that he has put to the witness.

13 MR HYLTON: No...

14 MR. SMALL: So the Bank of Jamaica, not giving that  
15 evidence, it is a little strange  
16 therefore that this suggestion should be  
17 put.

18 MR HYLTON: Finished?

19 MR SMALL: No. I was trying to hear the comment  
20 that was being made but apparently it  
21 wasn't for us.

22 MR HYLTON: It wasn't for you but it wasn't from me.

23 MR SMALL: Oh, I didn't recognize your voice.

24 MR HYLTON: It wasn't from me.

25 MR. SMALL: Okay. I am raising the question as to

1                   whether or not this is a proper question to  
2                   be put given that there is no  
3                   evidence to support it.

4   MR HYLTON:       Mr. Chairman...

5   MR SMALL:        And in circumstances where the witness has  
6                   given evidence already relating to this  
7                   specific matter and did not include such a  
8                   fundamental allegation as part of the  
9                   testimony.

10   MR HYLTON:      Mr Chairman, it is the same answer that I  
11                   gave earlier. This is not a situation where  
12                   we had Dr. Chen-Young's full statement in  
13                   advance at the time when we gave evidence and  
14                   so could address every single thing. This  
15                   statement, the one that was put in says  
16                   specifically at the top of page 18, that the  
17                   use of the Jellapore Trust allowed the de  
18                   facto owners to argue that they had no  
19                   influence or control et cetera. The only  
20                   thing that is being added now Mr Chairman,  
21                   is that this point was raised at a meeting  
22                   on the 1st February 1997, and the reason why  
23                   I raise it now is because in the submission  
24                   Dr. Chen-Young

25

1 referred to that meeting. So that before I  
2 got the submission I didn't know that he was  
3 making any point at that meeting and I didn't  
4 know that he would be coming to say that that  
5 meeting was a meeting where everything was  
6 hunky dory and he got the impression that  
7 everything was fine and that he got the shock  
8 of his life when he heard it was a problem.  
9 That's what changed. So it's the same  
10 allegation I am just placing into context of  
11 the meeting to which he refers.

12 I will allow the question.  
13 Thank you, sir. But I think he answered the  
14 question if I recall what he said. He had?

14 COMM BOGLE:  
15 MR HYLTON:

If I can recall.

16 Should I answer, Mr. Chairman?

17 COMM BOGLE: Pardon me?

18 Q: Should I answer?

19 A: I think you had before.

20 COMM BOGLE: No, but Mr Hylton has said something

21 A: totally incorrect. I have not in my

22 COMM BOGLE: submission said that everything was

23 A:

24

25

1 settled with the Bank of Jamaica. If you  
2 read carefully what is in the Minutes  
3 and what was read before the Commission  
4 was that there were some areas to be  
5 addressed. I never made any statement  
6 that everything was settled.

7 MR HYLTON: Okay.

8 COMM BOGLE: Okay, Dr. Chen-Young.

9MR HYLTON: You have devoted Dr. Chen-Young an  
10 entire chapter in your book, in your  
11 submission -- I call it book because of  
12 the chapters -- to the legal action  
13 brought against you?

14 A: Yes.

15 Q: And you have made various comments in  
16 relation to the judgment eventually  
17 given by Mr. Justice Anderson. But let  
18 us go back long before Justice Anderson  
19 had anything to do with this case. Do  
20 you recall that when the suit was  
21 brought against you a Mareva Injunction  
22 was granted?

23 A: (No answer).

24 Q: Dr. Chen-Young?

25 A: Yes.

1 Q: And do you recall that you applied to  
2 the court to set aside the Mareva  
3 Injunction and to set aside the suit  
4 itself?

5 A: Yes.

6 Q: Do you recall that you failed in those  
7 applications and appealed to the Court  
8 of Appeal?

9 A: Well, let me explain what was my  
10 recollection of what was argued on all  
11 sides, my side.

12 Q: No, no, I didn't ask you whether or  
13 not...

14 A: I just want to make sure I understand  
15 you. I want to make sure I understand  
16 what I am talking about.

17 Q: No, I am not asking what was argued, I  
18 just want to know whether you appealed  
19 to the Court of Appeal, that's all.

20 A: There were a number of situations  
21 involved with the Court of Appeal and I  
22 just want to state my understanding of  
23 the question which is raised and then I  
24 will give my answer. Because it's a  
25 very complicated case going on for 13

1 years.

2 Q: Mr Chairman, could the witness answer  
3 the question he is asked?

4 A: And my understanding as to what  
5 Mr. Hylton is asking was whether when  
6 the case came up or the injunction, that  
7 my attorneys advised me that the case  
8 needed Further and Better Particulars.  
9 That was the advice given to me.

10 COMM BOGLE: Dr. Chen-Young...

11 A: In other words...

12 COMM BOGLE: Dr. Chen-Young, I do not really think  
13 that that was the question.

14 A: I don't want to answer the question  
15 because I don't know what I am  
16 answering.

17 COMM BOGLE: I am going to ask Mr Hylton to ask the  
18 question again with the hope that Mr  
19 Hylton may be able to adjust the  
20 question.

21 MR HYLTON: We have so far established two comments:  
22 one, that you applied to have the Mareva  
23 Injunction set aside and the suit set  
24 aside. Two, that that application  
25 failed, and my third question was, did

1  
2 A: you appeal?  
3 If it had to do with the Further and  
4 Q: Better Particulars, then I agree.  
5 A: And if doesn't? Sorry.  
6 I am just trying to be very precise, that's  
7 all because there have been many appeals.  
8 Q: It's been a long time.  
9 A: That doesn't satisfy, I think.  
10 Q: There was also an application for  
11 Further and Better Particulars which  
12 also failed and which was also the  
13 subject of an appeal?  
14 A: Yes, correct.  
15 Q: But that's what I am interested in. So I think  
16 you can agree then that there was an appeal  
17 for Further and Better Particulars. And my  
18 question is, was there also an appeal in  
19 relation to the set aside?  
20 Yes. And we appealed, is that the  
21 question?  
22 A: Against the setting aside?  
23 Q: Yes.  
24 A: Thank you. Mr. Chairman, I now wish to  
25 Q:

1 refer to the third document that I  
2 handed up which is the judgment of the  
3 Court of Appeal in 2002. Now, we are  
4 looking Dr. Chen-Young at a written  
5 judgment of our Court of Appeal handed  
6 down on July 23rd, 2002. The appellants  
7 were Paul Chen-Young, Ajax Investments  
8 Limited and Domville Limited and the  
9 Respondents were Eagle Merchant Bank and  
10 Crown Eagle Life and just to remind you,  
11 your attorneys were Mr Emil George,  
12 Queen's Counsel; Conrad George, and Mr  
13 Roderick Gordon. Does that all ring a  
14 bell?

15 A: Yes, it rings a bell but not the  
16 appropriate term being used.

17 Q: Okay, I am sorry.

18 A: (Dr Chen-Young chuckles)

19 Q: The judges were Honourable Justice  
20 Downer who chaired the panel; Honourable  
21 Justice Harrison and Honourable Justice  
22 Panton. You don't have any issues with  
23 any of those judges?

24 MR SMALL: What is my friend getting at?

25 Q: I am getting at the fact that he has had



1 issues with other judges who have given  
2 judgments and therefore has issues with  
3 those judgments. So I want to make sure  
4 there is no issue with these.

5 COMM BOGLE: Move to the questions; I think we can  
6 move ahead of that question.

7 MR HYLTON: Very well, Mr Chairman. The judgment  
8 starts:

9 **"These importance interlocutory appeals**  
10 **from the orders of Mr Justice Ellis are**  
11 **concerns with claims by the appellants**  
12 **Paul Chen-Young, Ajax and Domville set**  
13 **aside the order made in the Court below.**  
14 **The appellants seek to free the relevant**  
15 **properties of the Mareva Injunctions**  
16 **imposed on the three appellants and set**  
17 **aside the Statement of Claim as well as**  
18 **make a Claim for Further and Better**  
19 **Particulars.**

20 So the Judgment starts by saying what it  
21 was all about, setting aside the Mareva  
22 Injunction; setting aside the Statement  
23 of Claim and getting Further and Better  
24 Particulars. Let us now go to the part  
25 that is relevant to the issues you have

1 raised in your submission. And I am  
2 turning Mr Chairman, to page 6 of the  
3 Judgment. And for the record  
4 Dr. Chen-Young this was a unanimous  
5 judgment of all three judges, this is  
6 what the judgment says in the middle of  
7 page 6.

8 A: Page what?

9 Q: Pardon?

10 A: Where do I look?

11 Q: No, you don't have this copy.

12 COMM BOGLE: Can you remind him what document you are  
13 dealing with?

14 MR HYLTON: I am reading from the Judgment of the  
15 Court of Appeal and how you dealt with  
16 the very first thing that we have been  
17 discussing. The first schedule at page  
18 35 of the record...

19 MR SMALL: Just a moment, Mr Chairman, what is the  
20 appropriateness of my friend referring  
21 to a Judgment of the Court of Appeal  
22 that is, by its very nature, an  
23 interlocutory proceeding dealing with  
24 the review -- and I am sure that you  
25 will be advised by your Legal Advisor if

1 in case what I say is not clear.  
2 Dealing with the review of the grant of  
3 an order, Mareva Injunction, before the  
4 trial is completed, what is the value of  
5 the comments of the court at that time?  
6 Particularly in light of what your  
7 Commission is investigating in this  
8 matter?

9 MR HYLTON: Finished?

10 MR SMALL: Finished, yes.

11 MR HYLTON: When I sought to refer on the Century  
12 Judgment the suggestion was that it  
13 doesn't relate to Eagle. Now that I am  
14 referring to Eagle Judgment is that it's  
15 interlocutory. Mr Chairman, I am relying  
16 on it because it also shows that what  
17 this witness has said is untrue. That's  
18 what I am relying on.

19 MR SMALL: Okay, and I am submitting Mr. Chairman  
20 that a judgment on an interlocutory  
21 matter where the matter is not being  
22 explored fully whereas the witness has  
23 said there was a claim for Further and  
24 Better Particulars, refining of the  
25 issues. At this stage, no matter what

1 the Judgment says, even if it makes a  
2 pronouncement it's inappropriate and not  
3 the useful use of this Commission's  
4 time.

5 COMM BOGLE: I am going to oppose the objection  
6 Mr. Hylton, I take the objection.

7 MR HYLTON: Could you tell me what the ruling is  
8 sir?

9 COMM BOGLE: Well, as far as -- I can't see, I am  
10 really looking at this -- unless you can  
11 explain to me further as to how this  
12 fits into our Terms of Reference and as  
13 it relates to this witness.

14 MR HYLTON: Mr. Chairman, if you look for example,  
15 page 8, the Judgment quotes from a  
16 document, a letter from Paul Chen-Young  
17 to the Bank of Jamaica, December 5,  
18 **1996: "Jellapore Investment Limited is a**  
19 **privately owned, Cayman Incorporated**  
20 **"Trust" and Cayman Trustees have advised**  
21 **that the Deed ought not to be released**  
22 **to a third party, as to do so would be**  
23 **inconsistent with the terms of the Trust**  
24 **and its obligations to the**  
25 **beneficiaries.**