

**PROCEEDINGS AT HEARING  
OF  
NOVEMBER 20, 2020**

**COMMISSIONER AUSTIN F. CULLEN**

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**November 20, 2020**  
**(Via Videoconference)**

**(PROCEEDINGS COMMENCED AT 9:30 A.M.)**

THE REGISTRAR: Good morning. The hearing is now resumed. Mr. Commissioner.

THE COMMISSIONER: Thank you, Madam Registrar. Yes, Mr. Davis.

MR. DAVIS: Yes, Mr. Commissioner. The next witness will be Dr. Michael Levi of Cardiff University, Dr. Levi previously testified in the overview portion of the commission hearings by way of a panel on June 5th and 8th, 2020.

And, Madam Registrar, I can advise that Dr. Levi will affirm.

THE COMMISSIONER: Thank you.

**MICHAEL LEVI, a witness  
called for the  
commission, affirmed.**

THE REGISTRAR: Please state your full name and spell your first name and last name for the record.

THE WITNESS: Michael Levi. M-i-c-h-a-e-l L-e-v-i.

THE REGISTRAR: Thank you.

THE COMMISSIONER: Yes, Mr. Davis.

MR. DAVIS: Thank you.

**EXAMINATION BY MR. DAVIS:**

1 Q Dr. Levi, can you see and hear me okay?

2 A Yes, I can. Thank you.

3 Q I'd like to start off with a quick review of  
4 your experience and education.

5 MR. DAVIS: Madam Registrar, if I could ask that you  
6 please pull up exhibit 21 onto the screen,  
7 please.

8 Q And do you see the document displayed there,  
9 Dr. Levi?

10 A I do.

11 Q And does this still reflect an accurate copy of  
12 your CV?

13 A Yes, it does.

14 MR. DAVIS: Thank you, Madam Registrar. I won't need  
15 that displayed any longer.

16 Q I don't intend you -- to take you through your  
17 CV in its entirety, Dr. Levi, as commission  
18 counsel conducted a more thorough review on the  
19 5th of June, 2020, but could you begin by  
20 summarizing your educational background for the  
21 Commissioner, please.

22 A Okay. Well, a long time ago I studied as  
23 Oxford, then Cambridge, then Southampton, where  
24 I did my PhD in 1972 on the organization and  
25 control of bankruptcy fraud. I then got a job

1 at Cardiff University in 1975 as a lecturer, and  
2 I subsequently obtained a higher doctorate for  
3 my -- for the corpus of my work on economic  
4 crime in 2007, which is -- the degree is called  
5 a DSc(Econ), a Doctor of Science in Economics.

6 Q And you've been a professor at Cardiff since  
7 1991; is that right?

8 A Yes, that's correct. Yeah.

9 Q And what are your main areas of research?

10 A My main areas of research are fraud, money  
11 laundering, corruption and terrorism, terrorist  
12 finance and transnational organized crime.

13 Q Thank you. And you are a member of the academic  
14 advisory group of the law commission proceeds of  
15 crime project; is that right?

16 A That's one of the things that I have done. It's  
17 now terminated because the commission recently  
18 published its report about -- over 700 pages,  
19 even longer than the ones that I prepared for  
20 this one.

21 Q Well, instead, then, Dr. Levi of asking you what  
22 are your responsibilities I'd ask what were your  
23 responsibilities in that role, and could you  
24 tell us briefly about the paper that was  
25 produced.



1           A     That is correct.

2           Q     What are your responsibilities in that role?

3           A     Well, we hold seminars and -- with invited  
4                   speakers on selected topics.  These days like  
5                   this hearing, remotely, but in normal times we  
6                   hold in person meetings on a variety of  
7                   subjects.  For example, I'm due to talk on a  
8                   project I've just done which is looking at the  
9                   relationship between fraud, economic crises and  
10                  pandemics.

11          Q     Thank you.

12          MR. DAVIS:  And, Madam Registrar, if I could ask that  
13                   you please display the document titled "Lawyers,  
14                   Their AML Regulation and Suspicious Transaction  
15                   Reporting," report for the Cullen Commission  
16                   2020, from the list of documents, please.  Thank  
17                   you.

18          Q     And, Dr. Levi, can you see this document on your  
19                   screen?

20          A     I can.

21          Q     And do you recognize it as a report on the  
22                   anti-money laundering of lawyers that you  
23                   prepared for the commission?

24          A     I do.

25          MR. DAVIS:  Mr. Commissioner, I'd ask that this

1                   please be marked as the next exhibit.

2                   THE REGISTRAR: Mr. Commissioner, the next number is  
3                   244.

4                   MR. DAVIS: You may be muted, Mr. Commissioner.

5                   THE COMMISSIONER: Thank you. Yes. Thank you, Madam  
6                   Registrar. 244.

7                   **EXHIBIT 244: Report entitled "Lawyers, their**  
8                   **AML regulation and suspicious transaction**  
9                   **reporting" Professor Michael Levi, Cardiff**  
10                  University, for the Cullen Commission, 2020

11                  MR. DAVIS: Madam Registrar, I won't need that  
12                  document displayed for the time being. Thank  
13                  you.

14                  Q    Dr. Levi, could you explain to the Commissioner  
15                  the context in which this report was prepared.

16                  A    Yes. I was asked to look at a range of  
17                  countries' experiences in regulating the legal  
18                  profession in relation to money laundering,  
19                  which, as my report suggests, and -- is still  
20                  alive and an evolving issue in many  
21                  jurisdictions with the general aim that the  
22                  commission might look at those experiences, and  
23                  some of the respondents to the commission might  
24                  as well, and see what, if any, lessons could be  
25                  drawn from those varied experiences for you to

1                   make up your own mind about ways forward.

2           Q       And what jurisdictions are covered in your  
3                   report?

4           A       They are mostly European jurisdictions, which  
5                   includes the UK -- they're no longer a member of  
6                   the EU -- but it also includes Australia briefly  
7                   and the US briefly. I was not asked to look at  
8                   the Canadian experience, and you will have more  
9                   knowledge of that yourself, but the -- I looked  
10                  in more detail at the UK's experience than that  
11                  of other jurisdiction but also not only because  
12                  of the Quebec analogy with France, but I looked  
13                  in some detail at the French experience and at  
14                  the Dutch, Italian, Spanish and Swedish  
15                  experience.

16          Q       Thank you. And before we get into more specific  
17                   questions, I'd ask, Dr. Levi, what cautions or  
18                   caveats the Commissioner should have in mind  
19                   applying the analysis or the lessons learned to  
20                   Canada in light of the fact that, as you've just  
21                   stated, the report relates predominantly to the  
22                   EU, the UK and the US.

23          A       Well, I think that the comparative work is  
24                   always difficult. When I was on the Royal  
25                   Commission on Criminal Justice, we had



1                   discussions, and one Commissioner said to me, I  
2                   don't know why we look at other jurisdictions;  
3                   we never actually really learn very much from  
4                   them. But I remain hopeful because, after all,  
5                   to the extent that money laundering is a global  
6                   phenomenon and to the extent that the Financial  
7                   Action Task Force and other bodies, including  
8                   the UNODC and OECD, try and have some  
9                   transnational purchase on their policies and  
10                  claim that this is a kind of international body,  
11                  it would be odd if other countries' experience  
12                  told us nothing about steps to avoid.

13                  Now, I think it's fair -- and as a lot of my  
14                  work is comparative, I would always say this.  
15                  It's fair to say that we need to take into  
16                  account the particular history and situation and  
17                  in some cases constitution of different  
18                  countries when we try and work out what lessons  
19                  we should adopt and what we should avoid. But I  
20                  think it would be a retrograde idea to say that  
21                  we can never learn from any other countries'  
22                  experience simply because they are not us.

23                  The temptation historically is only to look  
24                  at Anglophone jurisdictions. That, for example,  
25                  has been the history of the British parliament,

1 or the UK parliament, typically goes to the US,  
2 very occasionally Canada and Australia, but  
3 seldom to mainland Europe. But I do think that  
4 the variety of the jurisdictions which I looked  
5 at in some brevity because I had not done that  
6 previous to being asked to write this report, in  
7 the same level of depth I did a small study in  
8 the 2000s of the UK, the Netherlands, France and  
9 Italy and the way that they were then regulated  
10 at a time when there was far less pressure. But  
11 in general people haven't looked in a  
12 comparative way, and I think that you can learn  
13 a lot, provided that you take into account the  
14 specifics of the country and any constitutional  
15 issues that might be relevant.

16 Q And on that point, Dr. Levi, are there any other  
17 limitations that you can advise the Commissioner  
18 regarding the scope or depth with which you were  
19 able to examine the countries in your report?

20 A Yes. Without being either too modest or too  
21 arrogant, I mean, this was a rapidly conducted  
22 exercise. I tried to uncover what I could from  
23 the published documents in the different  
24 countries, not just Financial Action Task Force  
25 evaluation reports but also the documents that

1           the bar associations produced, any academic  
2           research, most of it descriptive, that I could  
3           find, and the legislation.

4           So within -- what could be achieved in a few  
5           weeks, I think I've done a fairly thorough job,  
6           but it's not -- but whereas in many of my  
7           research projects I may spend many months  
8           or years researching before I produce something,  
9           I would describe this as a light touch review.  
10          So there may be areas that I have failed to  
11          uncover, but I would defend myself on the  
12          grounds that I spent a good deal more time than  
13          I anticipated or the commission probably  
14          anticipated in preparing this document.

15          Q       And with that, Dr. Levi, my first area of  
16          questioning relates generally to the  
17          international response to the threat of legal  
18          professionals' potential involvement in money  
19          laundering.

20                 And with reference to page 1 of your report,  
21          what are the three issues you describe with  
22          respect to legal professionals that anti-money  
23          laundering legislation and rules attempt to  
24          address?

25          A       Well, they're really and in my previous answer I

1                   probably omitted that I do have a lot more  
2                   intensive involvement in the UK regulatory scene  
3                   as far as lawyers is concerned.

4                   First of all, lawyers can be primary  
5                   offenders. They commit fraud, they -- on their  
6                   own or in active combination with others,  
7                   usually for financial benefit but sometimes  
8                   because they're being blackmailed or because  
9                   they're faced with financial ruin and they  
10                  decide that crime is their way forward. Those  
11                  crimes are mostly fraud, but they can be other  
12                  things. But in the course of that, they can  
13                  also launder money.

14                  And the second area is lawyers as crime  
15                  facilitators. Providing legal services to the  
16                  establishment of corporate and other legal  
17                  instruments, fronts for crime commission and all  
18                  money laundering with various degrees of  
19                  consciousness or suspicion of the purposes. And  
20                  it's not possible sometimes to know how  
21                  conscious they were that they were helping a  
22                  criminal scheme. But nevertheless they  
23                  facilitate crime even if they're not conscious  
24                  of the fact that it is a crime.

25                  And the third area is lawyers as victims or

1           neutral intermediaries who are hacked. For  
2           example, there's been a lot of discussion about  
3           business email compromise in which lawyers --  
4           somebody thinks that they're sending money for a  
5           house purchase to their lawyer but actually  
6           they're sending it to a scammer who has  
7           impersonated the lawyer who's got control over  
8           the accounts and has switched the accounts so  
9           that they are not actually sending it to the  
10          lawyer's account; they are sending it to the  
11          scammer's account. That's one kind of thing.  
12          Or they're hacked, you know, either for exposé  
13          journalism, like Mossack Fonseca, or as an  
14          unwitting counterparty in some form.

15                        So I think I've tried to focus on the first  
16                        two of those areas in this report.

17          Q       Thank you. And looking -- I'm jumping ahead a  
18                   bit here to page 37 for reference. You describe  
19                   several of the principal ways that lawyers  
20                   become involved in money laundering and I -- you  
21                   know, it doesn't have to mirror the report, but  
22                   what are some of the ways that lawyers do become  
23                   involved in money laundering?

24          A       Well, if you're under pressure -- and of course  
25                   in a way lawyers' incomes have been often

1 declining in the COVID period, just to take an  
2 example, or in times of economic crisis -- then  
3 people are tempted -- we know from general  
4 white-collar crime research that people try and  
5 avoid a deterioration in their lifestyle.  
6 Obviously not many lawyers turn to fraud or  
7 money laundering when that happens; otherwise  
8 the rate of money laundering and fraud would be  
9 much greater than it is. But the -- but some  
10 are attempted.

11 Others get involved in perhaps -- yeah,  
12 there's been a lot of concern about gambling,  
13 not just in the kind of context of the Cullen  
14 Commission but in the terms of both online  
15 gambling and gambling in casinos. And some  
16 people really enjoy, they get hooked on gambling  
17 and they develop debts, and lawyers are included  
18 amongst the people who fall victim to that kind  
19 of addiction.

20 And they get blackmailed or perhaps they  
21 have a taste for fast women and slow horses or  
22 perhaps they get blackmailed because of  
23 homosexuality in those countries or extramarital  
24 affairs.

25 So for all of those reasons people can get

1 drawn into a criminal web, and sometimes there's  
2 also a personality affinity. People like the  
3 company of criminals. It's more exciting than  
4 the normal world they live in and unfortunately  
5 that affinity can sometimes lead them on the  
6 road to ruin.

7 Q And what can you tell the Commissioner about why  
8 organized crime would want a lawyer to be  
9 involved in a money laundering scheme? What's  
10 the utility from the perspective of an organized  
11 crime group?

12 MS. HERBST: May I just -- I do apologize for the  
13 interruption. This is Ludmila Herbst for the  
14 law society. Just for the benefit of  
15 participants following along, is there a  
16 reference that Mr. Davis could provide to the  
17 report for that?

18 MR. DAVIS: Yes. It's at page 2 of the report. And,  
19 Mr. Commissioner, I will continue to provide  
20 citations where I can. Thank you.

21 THE WITNESS: Sorry, was there a question?

22 MR. DAVIS:

23 Q Yes, there was, Dr. Levi. Looking at page 2 of  
24 the report.

25 A Right.

1           Q     I'm wondering if you can tell the Commissioner  
2                    about the utility of lawyer involvement in money  
3                    laundering schemes.

4           A     Okay. Well, it's very useful for lawyers to  
5                    have lawyers fronting up an operation because  
6                    lawyers justifiably have a reputation for  
7                    respectability, not just in Canada but around  
8                    the world. So it's a good idea to try to  
9                    recruit them. So if you can get them as a  
10                   director of a scheme, then that's even better.  
11                   Or if you can get them to testify that the  
12                   scheme is honest, then that's another good  
13                   technique. They may also be needed to -- or  
14                   notaries as well depending on the  
15                   jurisdiction -- to transfer property, to buy up  
16                   property. I mean, real estate is one of --  
17                   remains one of the most common and simplest  
18                   areas into which proceeds from crime are  
19                   laundered that we know about. And so a lawyer's  
20                   signature may be necessary for those kinds of  
21                   things.

22                               And lawyers are able to establish  
23                   corporations and other vehicles of ownership.  
24                   They're not the only ones. For example, you can  
25                   buy off-the-shelf companies in many



1                   jurisdictions without necessarily having a  
2                   lawyer there. And as assistance to launderers  
3                   by introducing criminals to financial  
4                   institutions. People often see this as a way of  
5                   legitimizing whereby in the know your customer  
6                   process of customer due diligence. If you're  
7                   introduced by a lawyer you're still supposed to  
8                   do your due diligence, but this is often  
9                   regarded as some kind of fiat of respectability  
10                  to the client.

11                Q    And turning gears for just a moment. Looking at  
12                   page 6 of your report, you discuss some of the  
13                   work done by the FATF with respect to legal  
14                   professionals. I'd ask what can you tell the  
15                   Commissioner about the recent work done by the  
16                   FATF with respect to legal professionals?

17                A    Yeah, well, the FATF produced a quite long  
18                   document in 2019 and basically, unlike some of  
19                   the earlier typologies which had very little  
20                   professional involvement from the private  
21                   sector, what -- this represented a kind of  
22                   change in FATF thinking, so there was quite a  
23                   bit of mostly European legal involvement in the  
24                   preparation of those guidelines. And it  
25                   certainly improved the sophistication of its

1                   guidance, partly due to being more open to  
2                   private sector submissions but also through  
3                   learning a lot more about how lawyers go about  
4                   their business.

5                   I don't actually cite the 2019 guidance much  
6                   in detail because I didn't think it was  
7                   necessary, but recommendation 22, for example,  
8                   provides that customer due diligence and  
9                   recordkeeping requirements apply to legal  
10                  professionals when they prepare for and carry  
11                  out certain specified activities for their  
12                  clients, namely buying and selling real estate,  
13                  managing of client money, securities or other  
14                  assets, management of bank savings or security  
15                  accounts, organization of contributions for the  
16                  creation, operation or management of companies  
17                  and the creation, operation or management of  
18                  legal persons or arrangements and buying and  
19                  selling of business entities.

20                  So it gives quite a lot of detail about the  
21                  kinds of things that lawyers should do and  
22                  should not do, should be aware of the risks of  
23                  doing in that guidance, which is much fuller and  
24                  more sophisticated than anything they did  
25                  before.

1           Q     And, Dr. Levi, you've gone a little bit ahead of  
2                   me here, but I'll jump ahead to ask. That list  
3                   of transaction types that you've just discussed  
4                   pursuant to the guidance, what is your view on  
5                   the scope of those transactions for -- so I  
6                   suppose I'll phrase it this way: in your view,  
7                   is that list of transactions adequate to address  
8                   the risk that you see might arise from lawyers  
9                   becoming involved in money laundering?

10          A     Yes, I think it is. Perhaps -- if I may evolve  
11                   the question a little bit.

12          Q     Please.

13          A     There's always an issue in anti-money laundering  
14                   about how far any regulatory process should go.  
15                   As somebody who has been involved in money  
16                   laundering research since 1988, it's expanded a  
17                   lot from those early days when it was seen very  
18                   much in terms of drug dealers putting cash from  
19                   drug sales into the system and finding ways of  
20                   hiding it and becoming respectable. Like the  
21                   movie *The Godfather*. So -- and perhaps not just  
22                   from drugs, from extortion, from racketeering,  
23                   et cetera.

24                                 So the question about what are the proper  
25                   limits of anti-money laundering is largely

1           played out in the political arena and there  
2           hasn't been very much conceptual analysis of the  
3           costs and benefits of the extension of the AML  
4           remit. And it's not for me as a mere academic  
5           to state what those limits should be. I'm not  
6           sure that my view about its limits are worth any  
7           more than any of the people listening to this  
8           session, but the -- so in a way you've asked me  
9           a normative question about the proper limits.

10                    I would say empirically that those areas  
11           cover the kind of areas in which lawyer abuse  
12           has been identified, either willing lawyer abuse  
13           or unwilling lawyer abuse, and there are various  
14           subsets of that which we may get into later  
15           about trusts and various other legal  
16           constructions, but it was intended to cover  
17           those without going too far in FATF terms. But  
18           in a sense the kickback for FATF is what the --  
19           what its member states will tolerate. And the  
20           same thing applies to the European Union's  
21           anti-money laundering policy.

22                    Like many areas of crime control, it expands  
23           to or contracts depending on what the political  
24           market will bear. So there's both a political  
25           realism component and a "to what problems might

1                   this be a solution" component in this. But to  
2                   the -- to what problems might this be a  
3                   solution, I think it goes far enough until  
4                   different kinds of abuses might get exposed in  
5                   the future, in which case they'll re-evaluate  
6                   the application.

7           Q       And, Dr. Levi, what is your view on the utility  
8                   of the sorts of broad guidance documents like  
9                   the guidance to legal professionals that you  
10                  just discussed?

11          A       What the FATF tried to do and I think the  
12                  involvement just -- not just of Anglo-Saxon  
13                  jurisdictions but of civil law jurisdictions in  
14                  the formulation and the review of their  
15                  importance, when I was involved in reviewing the  
16                  whole evaluation process, the country evaluation  
17                  process of anti-money laundering in the early  
18                  part of the last decade, one of the points that  
19                  was -- sorry, I'll just -- for some reason my  
20                  phone is on.

21                         When I was involved in the -- in reviewing  
22                         the evaluation of anti-money laundering process,  
23                         one of the things that many people said to me  
24                         is, ah, but the trouble is the FATF has become  
25                         a -- and its evaluation process has become very

1 Anglo-Saxon, and it doesn't take into account  
2 enough of the continental European processes  
3 which are different. I don't think that's as  
4 true now as it was then, and I don't think it's  
5 as true of this guidance, which does try to look  
6 at legal professional privilege or professional  
7 secrecy as the continental jurisdictions  
8 generally refer to it more.

9 But the point is that can't cover, without  
10 being totally incoherent, every nuance of  
11 different countries; otherwise it would be  
12 prescribing a total system. The way I like to  
13 think about it is that OECD and the  
14 transnational bribery convention had this  
15 concept of functional equivalence whereby it  
16 didn't matter so much whether you -- for  
17 example, you had corporate criminal liability  
18 for transnational bribery because many European  
19 continental jurisdictions thought this was  
20 completely improper, so long as you had a method  
21 of punishing corporations so they didn't have an  
22 incentive in France or Germany or Austria or  
23 Switzerland for violating the rules. So you  
24 looked at -- not so much at the form as the  
25 concept.

1           Q     And that leads me to my next question, Dr. Levi.  
2                     And you noted at page 6 of your report that  
3                     there are and plausibly remain many national  
4                     differences in the implementation of FATF  
5                     principles. And you cite politically exposed  
6                     persons and enhanced due diligence; is that  
7                     right?

8           A     That is correct.

9           Q     And my question to you is what risks, if any, in  
10                    your view does a lack of harmonization --  
11                    whether that be between countries or, in the  
12                    case of Canada, between provinces, what risk  
13                    does a lack of harmonization present for the  
14                    legal profession?

15          A     Well, one thing -- I mean, one risk that it does  
16                    present is that people can forum shop for  
17                    lawyers. So they might find lawyers in less  
18                    regulated jurisdictions or, in the case of  
19                    Canada, less regulated provinces to do their  
20                    business for them. It's difficult to assess how  
21                    often that happens. There aren't any studies of  
22                    that that I have seen, but I think one of the  
23                    constraints on that is that having a lawyer from  
24                    a different jurisdiction doing it can raise  
25                    people's suspicion. Like, you know, why are

1           they getting a lawyer from there rather than a  
2           lawyer that is more local to do the job? So  
3           people in a sense have to have a rationale for  
4           that process, if anybody asks. But the -- but  
5           that kind of, if you like, it's not quite forum  
6           shopping, but it's the equivalent of that.

7                     Now, some of the international bodies,  
8           policing bodies say organized crime moves  
9           mellifluously across borders and will likely  
10          employ lawyers to do that if they're frustrated  
11          somewhere. There's a kind of displacement  
12          theory of everything. It's not as easy as that,  
13          in my opinion and from the research that I and  
14          many other people have done, because you need to  
15          have a lot more local knowledge and a lot more  
16          local contact to be able to do that. But there  
17          is a risk that that can happen and there's also  
18          a collateral damage risk which may be different  
19          from a crime risk, which is that the  
20          international community through the FATF and  
21          through other bodies may punish the jurisdiction  
22          and in a sense thereby indirectly punish the  
23          legal profession for failing to adhere to its  
24          international norms. I mean, that is the  
25          whole -- ever since the FATF discovered and



1           created the -- its blacklisting and greylisting  
2           process, that is what has been happening. It's  
3           mostly poorer countries that have been punished,  
4           but in general it's bad for countries'  
5           reputations if they fall short in some respects.  
6           Some countries can survive that more easily than  
7           others.

8                        So there's both the assisting laundering  
9           component and there's the political and economic  
10          consequences for the reputation of the country  
11          that may be affected.

12          Q        Thank you, Dr. Levi. And the next portion of my  
13          examination, I'll ask you about some of the  
14          general themes that you saw through your review  
15          of the various countries' anti-money laundering  
16          regimes with respect to legal professionals and.

17                       And I'll start by asking you about a quote  
18          at page 2. And I'll read here that:

19                               "Obviously any analysis of the adequacy of  
20                               lawyer regulation is predicated upon what  
21                               has been investigated and therefore is  
22                               known about, and this in turn is affected  
23                               by the powers of the investigative  
24                               authorities as well as their priorities."

25          Can you unpack that statement for the

1 Commissioner. Sorry, I appreciate I didn't give  
2 you a chance to find it.

3 A Yeah, it's okay. I think that is a perfectly  
4 reasonable question. I apologize for the  
5 denseness of my expression.

6 The -- I mean, what I'm getting at is  
7 something that hasn't been addressed adequately  
8 in the international sphere, in my personal  
9 view. You know, whatever we know about money  
10 laundering is influenced by the cases that we  
11 dealt with. And not necessarily the cases that  
12 have led to conviction, but at least the cases  
13 that have been investigated, written about,  
14 internally communicated within enforcement  
15 bodies, banks, the legal profession, et cetera.

16 So if something hasn't been investigated  
17 properly, perhaps because of legal professional  
18 privilege, perhaps because, quite rightly I  
19 would say, lawyers' offices can't be bugged as  
20 easily as my office could be. And you can see  
21 from its state of tidiness that it would be  
22 pretty easy to hide a bug in my office except  
23 that I do occasionally have it swept.

24 But the -- because it's not allowed for  
25 lawyers' offices to be bugged in most parts of

1           the world and certainly even if it's done  
2           improperly, they know that that evidence, that  
3           intelligence can't be used in evidence.  
4           Therefore we don't know as much as we might  
5           otherwise do about what malfeasance lawyers have  
6           been up to, the extent to which they have  
7           actively conspired with offenders or whether  
8           they are just mugs in some cases. And very  
9           smart people -- as we know, and I speak as an  
10          expert in fraud, very smart people become  
11          victims of fraud. It's easy to be taken in by  
12          smooth criminals and to believe that you're  
13          assisting a brilliant scheme that will make  
14          everybody rich that turns out to be a Ponzi  
15          scheme. Look at the people who lost not just in  
16          Bre-X and other historic Canadian cases but in  
17          Madoff and cases like that.

18                 So we don't know to the extent to which  
19          people actively participated or were victims,  
20          and that's because lawyers' premises are  
21          regarded as off limits to most law enforcement  
22          organizations in most countries. So that's  
23          really what -- and if you add to that the fact  
24          that the money laundering components of most  
25          crimes, whether they be fraud or drugs



1 professional conduct -- or sorry, does the model  
2 rule of professional conduct impose on lawyers?

3 Sorry. That was page 7, Dr. Levi.

4 A Oh, yes, the 2013 one. Yeah. It's mostly --  
5 they're expected to know who they're dealing  
6 with. They are expected to develop some  
7 outreach in professional training. There's --  
8 it doesn't really go very far beyond that.  
9 There's a stress on the duty of confidentiality  
10 that they owe to their clients, but basically  
11 it's know your customer. It's the same kind of  
12 obligations that they have to -- that banks have  
13 had for a very long time, but they're not  
14 expected to do very much enhanced due diligence  
15 in that.

16 Q And that was my next question is what can you  
17 tell your Commissioner about your view of  
18 relying on those sorts of ethical obligations or  
19 rules of conduct in order to combat potential  
20 money laundering through legal professionals?

21 A That is a very important and very difficult  
22 question to answer. In a sense if we had enough  
23 information about the level of ethical behaviour  
24 that lawyers apply in their everyday life, we  
25 might either go for more regulation or tougher

1 external scrutiny or less. If you take the  
2 principle that any extra obligations imposed on  
3 lawyers need to be justified by hard evidence  
4 that they're not behaving ethically, then we can  
5 only do that in the following sort of way, by  
6 looking at cases like -- for example, the  
7 permanent subcommittee of investigations in the  
8 US has exposed many abuses in -- the abuse of  
9 charities in some of which lawyers have been  
10 involved with.

11 Another kind of approach we might take would  
12 be a kind of mystery shopping approach which was  
13 what Global Witness did in its report -- it's  
14 not cited in my report, but I can kind of fill  
15 that in -- "Lowering the Bar" where they  
16 pretended to be corrupt politicians and they  
17 approached US lawyers to ask them to help with  
18 their scheme and only one of the dozen people  
19 approached -- including the president elect of  
20 the American Bar Association, only one of them  
21 turned them away. And one of them gave very  
22 active advice as to how they might get around  
23 the rules. Of those 12, two were disciplined,  
24 to my knowledge. And there were no other  
25 consequences, to my knowledge, for any of the

1                   other firms involved.

2                   So in that kind of mystery shopping  
3                   exercise, then, we can deduce something about  
4                   how ethical constraints work in practice. That  
5                   is not a good test for relationships between  
6                   people who know each other well because if you  
7                   know each other well, you don't need to -- you  
8                   know, it's not a question of strangers  
9                   approaching you; it's a question of favour  
10                  trading or believing that the person you're  
11                  dealing with is a good person and therefore  
12                  isn't a crook and therefore you don't have to  
13                  devote as much scrutiny as you otherwise do.

14                  So that's a rather long-winded answer to  
15                  your question, and I'll just add a couple of  
16                  more points. The -- so if we think it's easy to  
17                  assert that ethical rules are -- guide our  
18                  behaviour, it's difficult to falsify, but it's  
19                  also difficult to prove that it does control  
20                  your behaviour. And so in a world in which  
21                  skepticism is applied to claims by professionals  
22                  generally, including my own profession but also  
23                  to professional lawyers, people want a higher  
24                  degree of external accountability than they have  
25                  done in the past.

1                   So the fact that you've got an ethical rule  
2                   tells us nothing or very little about the  
3                   conditions of its application. To find out we  
4                   need to test it in some way or ask for evidence  
5                   that it's working. Actually, people very seldom  
6                   collect data on how many clients they've turned  
7                   away and there's very seldom -- except in some  
8                   rare cases very seldom any requirement to make  
9                   suspicious activity reports on people you've  
10                  turned away, even in those jurisdictions where  
11                  they are making SARs.

12                  And so the state of our knowledge is weak.  
13                  And it's easy to see -- it's hard to see how it  
14                  could be massively improved over the lifetime of  
15                  this report. All I would say is that the demand  
16                  for external skeptical scrutiny remains whatever  
17                  the claims of professionals. We all regard  
18                  ourselves as virtuous, but how do we demonstrate  
19                  that in practice?

20                  And responses to mystery shopping. There  
21                  have been a couple of other examples of that in  
22                  research studies as well, and they are not  
23                  encouraging. For example, one study found that  
24                  in financial services, financial intermediaries  
25                  in the US were far more likely than those in



1                   stigmatized jurisdictions in the Caribbean to  
2                   bypass know your customer requirements for them.  
3                   So in a way the more elite the jurisdiction,  
4                   perhaps the more people feel they can get away  
5                   with. I don't make any claims to knowledge of  
6                   whether that happens in Canada or not.

7           Q       Thank you. And you mentioned SARs, suspicious  
8                   activities reports; is that correct?

9           A       Yeah.

10          Q       I'm just wondering what you can tell the  
11                   Commissioner about your takeaway regarding the  
12                   variety of reporting obligations in the  
13                   countries you examined with respect to  
14                   suspicious transactions, please.

15          A       Well, in relation to lawyers, I think we have to  
16                   see this as a work in progress or regress, as  
17                   some might see it. The different countries in  
18                   Europe and the European Commission is currently  
19                   taking proceedings in the European court of  
20                   justice against Hungary and Poland for their  
21                   failure to implement European rule of law but  
22                   also anti-money laundering efforts.

23                   So different jurisdictions grew up at a  
24                   different pace. The UK was the first, I think,  
25                   to undertake regulation of the legal profession



1 UK -- and I'm not selling the UK here, but the  
2 UK is at the end of the larger number of reports  
3 and the larger government scrutiny of those  
4 reports. And other jurisdictions are -- I won't  
5 say far behind because that assumes a kind of  
6 moral superiority of the British position, but  
7 are reporting far less, and it's difficult to  
8 see what the impact is of those different  
9 systems.

10 Q On that point, you noted at page 29 of the  
11 report that Switzerland in particular requires  
12 "significant internal development" before filing  
13 an SAR. What can you tell the Commissioner  
14 about the Swiss approach and namely your  
15 language of "significant internal development"?

16 A Yeah, well, there remains an active argument  
17 about whether more is better in the number of  
18 SARs. Some -- the FATF is generally -- and many  
19 NGOs have taken the view that more is better.  
20 And the legal professional is merely one  
21 profession that is being pressurized to report  
22 more often. And the absence of -- or relative  
23 absence of reports from lawyers is seen as a  
24 negative sign of compliance with the system.

25 But in the case of Switzerland -- partly

1                   because once a report is made, the account is  
2                   automatically frozen for a few days while the  
3                   prosecutor decides whether to take the case on  
4                   or not. So that creates much more of a time  
5                   pressure on the authorities to do something but  
6                   also to restrain themselves in their reporting  
7                   behaviour. And it's part of the cultural norm  
8                   in Switzerland that they really have to, if you  
9                   like, be convinced that there is something to  
10                  the suspicion before they report it to MROS,  
11                  which is their financial intelligence unit.

12                   That being said, there are -- and it's not  
13                   in my report, but there are 6,000 reports to  
14                   MROS that at the end of last year were waiting  
15                   to be looked at and acted on, which in a  
16                   relatively low reporting jurisdiction is quite a  
17                   significant proportion. So in a sense the more  
18                   pressure we put on bodies to report, the more  
19                   pressure there may be. It's a hydraulic system.  
20                   The American satirist and mass professor Tom  
21                   Lehrer once said life is a like a sewer: what  
22                   you get out of it depends on what you put into  
23                   it. And without introducing too much levity  
24                   into this process, unless you follow up the  
25                   reports and you have the resources to do that,

1           then there isn't that much point in getting  
2           people to report more.

3           I can talk about the benefits and costs of  
4           more reporting. It's not just investigation to  
5           prosecution. Reports may usefully tell you  
6           where assets are, what -- you know, accounts are  
7           fruitful to look into, what aren't. So there  
8           are various other benefits from having a lot  
9           more reporting, but there are advantages in the  
10          Swiss approach but there are also disadvantages.  
11          One of which is that a lot of people are  
12          reasonably or unreasonably suspicious that the  
13          Swiss are hiding a lot of money laundering  
14          cases, which in the UK certainly would be  
15          reported and the FinCEN files show that not much  
16          happened to a lot of the reports. You can't  
17          deduce how many from the FinCEN leaks, but not  
18          much happened to a lot of the reports that were  
19          made.

20          And then the banks get criticized for not  
21          doing enough to stop it, but actually also the  
22          public authorities ought to be criticized for  
23          not following up the reports that they received  
24          enough.

25          Q     Thank you. And again jumping around a bit here.

1                   You noted at page 6 of your report that one of  
2                   the Financial Action Task Force, the FATF,  
3                   interpretive notes contemplates that legal  
4                   professionals report not to a financial  
5                   intelligence unit but to a self-regulatory  
6                   organization. Is that right?

7           A       Well, that's one of the possibilities that --  
8                   perhaps I expressed myself wrongly, but they're  
9                   not saying that they shouldn't be reporting to  
10                  the financial intelligence unit. What they're  
11                  saying is that in jurisdictions where they don't  
12                  report to a financial intelligence unit, there  
13                  should be a process for dealing with stuff.

14          Q       Right. And one of those jurisdictions, which  
15                  for the record starts at page 11 of the report,  
16                  is in France. Is that correct?

17          A       That is correct.

18          Q       And what can you tell the Commissioner about the  
19                  French reporting system?

20          A       Well, the French process is an evolving issue as  
21                  well. They have changed their system this year.  
22                  In fact, almost as we speak there are changes  
23                  going on, and I can forward to the commission  
24                  the latest changes as of this month in the  
25                  French system.

1                   So the *bâtonnier* is a central figure in the  
2                   French profession elected by their peers,  
3                   endowed with wide disciplinary prerogatives,  
4                   powers to resolve disputes between advocates,  
5                   fee disputes with clients. They are  
6                   intermediaries, but they're more than that.  
7                   They're rather the most senior professional  
8                   authority in each bar. In a sense it's a  
9                   successor to a medieval guild.

10                   Generally speaking we now have a third  
11                   guidance by the Conseil national des barreaux in  
12                   hand. It's more detailed than the previous  
13                   guidance and addresses some of the 2020  
14                   novelties, for example. Expansion of customer  
15                   due diligence, CDD. Measures to all lawyer  
16                   activities, in particular in connection with the  
17                   two reporting safe harbours, which are legal  
18                   advice and contentious proceedings. This  
19                   guidance is issued, as I say, by the Conseil  
20                   national de barreaux which is the overarching  
21                   federation of the 169 regional bars and control  
22                   is effected by the regional bars under which --  
23                   each of which is a *bâtonnier*.

24                   Now, the French reporting obligation  
25                   requires that communication be sent to the head

1                   of the regional bar. This is referred to in my  
2                   half decent French as the *filtre du bâtonnier*.  
3                   The *bâtonnier*'s filter. The French profession  
4                   places a lot of stock on it, referring always to  
5                   the European Court of Human Rights decision in  
6                   *Michaud* 2012. The *bâtonnier* has to be an  
7                   advocate who is elected by his peers in each  
8                   regional bar. Under law advocate suspicious  
9                   transaction reports cannot be filed directly to  
10                  the financial intelligence units, though the  
11                  financial intelligence unit perhaps would like  
12                  them to, but must be sent to the *bâtonnier*. The  
13                  only exception where direct reporting to the FIU  
14                  is allowed is when the advocate acts as a  
15                  fiduciary, which is the closest French  
16                  equivalent to a trustee in Anglo-Saxon  
17                  jurisdictions, and a very specific situation  
18                  governed by a very specific type of contract,  
19                  the *fiduciaire*. This is probably quite rare but  
20                  I don't have any data about how common it is.

21                Q     Thank you, Dr. Levi. And just to be clear, how  
22                    does the intermediary in France address issues  
23                    of professional secrecy and privilege that might  
24                    be communicated to it by its members?

25                A     Well, it retains the professional secrecy. It



1 is understood, as actually in a number of  
2 jurisdictions, that communication between the  
3 would be reporter and the *bâtonnier* are covered  
4 by legal professional privilege themselves and  
5 that therefore the, if you like, French  
6 government investigators are not allowed to get  
7 the information unless the *bâtonnier* passes it  
8 forward for them to be investigated.

9 There's been quite a change. I think in  
10 France as in some other jurisdictions, the  
11 Netherlands, for example, the Tracfin, the FIU  
12 of France, has done a lot of kind of outreach  
13 seminars and discussion, so a lot more lawyers  
14 feel kind of more confident, as far as I  
15 understand it, to report material than used to  
16 be the case. And they're also more aware of  
17 their responsibilities than used to be the case.  
18 But people tell me, and I cannot assess whether  
19 it's true or not, that the role of lawyers in  
20 French everyday commercial life is less than it  
21 might be in, say Canada or the US or the UK.

22 Q Thank you, Dr. Levi. And you go on at page 10  
23 to describe some of the statistics that are  
24 provided by the French FIU with respect to legal  
25 professionals. And, Dr. Levi, the Commissioner

1                   has heard evidence this week from some witnesses  
2                   about statistics and/or reports that may have  
3                   had a mention of lawyers.

4                   I'd ask you what qualifications should the  
5                   Commissioner have in mind when he looks at that  
6                   sort of FIU data that might have a mention of  
7                   lawyers in the abstract?

8           A       This is where we get into the difficult issue of  
9                   evaluation.  Those jurisdictions -- and the UK  
10                  is one.  We've just had the most recent SARs  
11                  reports this week, over 3,000 reports by lawyers  
12                  in the latest suspicious activity report data.  
13                  The -- nobody knows, and I certainly don't, what  
14                  the right number of reports is.  The -- I would  
15                  say that when looking at different countries and  
16                  trying to make that judgment, first of all you  
17                  need to take into account what kind of economy  
18                  is it and how -- you know, where are lawyers  
19                  used in that system, where might they be used  
20                  for money laundering.  And that is not a simple  
21                  blanket answer.

22                  But the points I started out by saying  
23                  suggest that lawyers would be useful in any  
24                  jurisdiction for money laundering.  Less useful  
25                  in France because of the special role -- yeah,

1                   because lawyers don't have clients' accounts in  
2                   the same way that, say, British lawyers do and  
3                   office accounts because those are dealt with by  
4                   a separate organization. And the -- you have to  
5                   take that into account.

6                   I don't -- it would be -- one way of  
7                   interpreting the data generally would be to get  
8                   evidence from the different jurisdictions. But  
9                   I would say well, under what conditions do they  
10                  suspect; what do the few studies of mystery  
11                  shopping tell us about their willingness to do  
12                  that in different jurisdictions? The evidence,  
13                  as I say, is not very strong about the  
14                  particular role of lawyers in that, and lawyers  
15                  might well say, well, we approach -- we didn't  
16                  do that much due diligence initially, but we  
17                  would have done more at a later stage if they  
18                  had proceeded with the investigation. So  
19                  that -- what that might tell you is perhaps they  
20                  don't do the know your customer initial customer  
21                  due diligence as much as they should do, but  
22                  that doesn't mean to say they would be willing  
23                  to lend themselves to money laundering.

24                  What the British data tell you is that -- I  
25                  think British lawyers take their duty seriously

1                   and there's a pretty wide coverage, including  
2                   suspicion of tax fraud. We had a lot of  
3                   discussion that yeah, if you were acting for a  
4                   client in a divorce case and you found a little  
5                   bit of income that hadn't been disclosed to the  
6                   other party, did you have an obligation to  
7                   report that. Well, eventually it was decided  
8                   that no, but there's no -- the whole area of  
9                   *de minimis* reporting is still an active  
10                  discussion in many jurisdictions. But if we  
11                  say, well, what is the overall goal of  
12                  anti-money laundering? It's to focus in general  
13                  on the important stuff, on the big stuff, rather  
14                  than on whether somebody is doing some minor  
15                  social security fraud. Not belittling social  
16                  security fraud as an issue but it's different  
17                  from major drugs trafficking, major fraud, major  
18                  transnational bribery cases.

19                         So I would say -- I would look at it that  
20                         way. I would say to myself, well, what are the  
21                         major crimes that we know about in those  
22                         different countries and how many cases do we --  
23                         is it plausible that the lawyers might have  
24                         known about that and didn't report they should  
25                         have had suspicion. Whether they did have

1                   suspicion, that is a more difficult question and  
2                   I'm not sure how we can address that. But if  
3                   the facts of the situation suggest that the  
4                   lawyer was involved, well, why weren't they  
5                   prosecuted? Was that because the prosecutor was  
6                   scared to take them on? Too much hassle? Those  
7                   are questions that don't leap out from the data  
8                   as such and you are asking me about the data.

9                   All I'm saying is that in general, if we  
10                  look at -- the number of referrals historically  
11                  to bar associations in those countries that have  
12                  a self-regulatory system have not been public.

13                  Q     Sorry. Dr. Levi, that's referrals for --

14                  A     The number of referrals to bar -- to, say, the  
15                  *bâtonnier* in the French system --

16                  Q     Thank you.

17                  A     -- or to its equivalents in Spain, et cetera,  
18                  have not been public data. But under the new  
19                  French system, as I understand it, as of this  
20                  month or last month, they will be made  
21                  available. In other words, the *bâtonnier* will  
22                  have to -- will be expected to report the number  
23                  of cases that they have handled kind of  
24                  internally. But it also makes a difference if  
25                  you -- if you are expected under the bar rules

1           to get rid of your client once you've made a  
2           suspicious transaction report or activity  
3           report, then you can say well, in a sense no  
4           harm was done. So yeah, maybe that shows the  
5           system is working. What we don't know is  
6           whether they went to another lawyer and got  
7           their satisfaction from them, and they didn't  
8           report.

9                        So to come back to Don Rumsfeld's famous  
10           known knowns, known unknowns and unknown  
11           unknowns, we're in the realm of known unknowns  
12           here, and I'm afraid that neither my research,  
13           extensive though it's been, nor that of many  
14           other people can throw a lot of light on that.  
15           So you'll just have to make a reasoned judgment  
16           as best you can.

17           Q       And the Commissioner heard evidence this week as  
18           well, Dr. Levi, about the feasibility of  
19           reporting by lawyers in British Columbia to an  
20           intermediary in an environment where lawyers  
21           would be expected to withdraw before any such  
22           report was made. What thoughts do you have, if  
23           any, on that dilemma?

24                       And I can rephrase if that's not clear, but  
25           I think I've got my question across.

1           A     Yeah. Well, if the system were working well  
2                    enough, then we wouldn't have many lawyers  
3                    assisting crime. I mean, the -- let me try and  
4                    deal with that conceptually at the risk of  
5                    boring you.

6                    We have -- there are a series of attrition  
7                    processes here. Has the lawyer actually  
8                    suspected anything here? Yeah. Sorry, has the  
9                    lawyer tried to do their customer due diligence  
10                   in the way that they are supposed to do it? If  
11                   they have, did they suspect there was anything  
12                   dodgy, to use a colloquialism, about the client?  
13                   If they were fooled, well, yeah, that may be bad  
14                   for their reputation, but there's no crime here  
15                   by them.

16                   In the case of beneficial owners, how much  
17                   effort did they put into finding the beneficial  
18                   owner? And there may be a consensus about how  
19                   much is enough. In many of the FinCEN files  
20                   cases, the -- a lot of the cases had dragged on,  
21                   then adverse media appeared about the beneficial  
22                   owner or some intermediary, and then the bank  
23                   re-evaluated the situation -- and there weren't,  
24                   as far as I know, not many lawyer cases in  
25                   there -- and they came to a different

1 conclusion. So, in other words, initially they  
2 thought it was all right and then they realized  
3 it wasn't, and then they made their report. So  
4 this process can take years.

5 So there may be professional standards that  
6 may be imposed as to how much effort and what  
7 processes you should do. And there are enough  
8 consulting companies ready to advise that kind  
9 of thing. You should do -- into that KYC  
10 process. Sorry about the acronyms.

11 The -- did you suspect -- if you didn't  
12 suspect them, of course you wouldn't make a  
13 report, and that's one of the weaknesses in a  
14 lot of the discussion about it. But if you did  
15 and you're expected to refuse to act for your  
16 client, then in a way the job has been done.  
17 Unless you've done something for them before you  
18 develop that suspicion, in which case, you know,  
19 have you reported what you did for them before,  
20 and to whom?

21 That I think is the grey area in the system,  
22 as you've described it to me, in Canada because  
23 if you thought that they were all right, you'd  
24 acted for them and subsequently something  
25 happens to make you change your mind, you know,



1                   without, without -- let us assume -- and I won't  
2                   name the company. Let us assume you were doing  
3                   transactions on behalf of a major Canadian  
4                   construction company and you later found out  
5                   there was some negative things about that  
6                   construction company. Do you refuse to act for  
7                   them as of now but perhaps make reports? Do you  
8                   re-evaluate the things that you did for them in  
9                   the past and then report that? What's the  
10                  process by which we come to know about that.

11                  So I think it makes a difference how long  
12                  you've -- that they've been your client for or  
13                  whether this is the early stage of a  
14                  relationship. Have I explained that --

15                  Q    You have. And if I --

16                  A    -- coherently?

17                  Q    Yes, you have. Thank you, Dr. Levi. And I go  
18                  on to look at page 48 of your report. Just let  
19                  me know when you're there so I'm not jumping  
20                  ahead.

21                  A    Yeah.

22                  Q    You write that "refusal to act alone," and I'm  
23                  going to insert here for persons to launder  
24                  money, "is little deterrence or prevention."  
25                  And so this ties into the discussion we're

1                   having now. Why do you believe that to be the  
2                   case?

3           A       Well, refusal to act for someone obviously  
4                   disrupts them and that's a gain. If you turn  
5                   someone down and they find somebody who is  
6                   willing to act for them, then that gain is a  
7                   very marginal gain. It has protected you as a  
8                   lawyer, it's also denied you. Not you  
9                   personally, counsel. The -- it has denied you  
10                  some income which otherwise you might have got.  
11                  It's protected your reputation, if it comes out,  
12                  and only if it comes out. It's protected your  
13                  reputation, which may be important to you or it  
14                  may not be. But let's assume for the sake of  
15                  this argument it is important, so it's protected  
16                  your reputation. It's denied you some income,  
17                  but it hasn't denied the criminal the  
18                  opportunity to launder their funds. And unless  
19                  they think -- and this is perhaps something that  
20                  I didn't -- I wasn't explicit enough in the  
21                  phrase that you've quoted about. If it's the  
22                  case that they try lots of lawyers and lots of  
23                  lawyers won't act for them, then that is a  
24                  deterrent. And then we don't know what happens  
25                  in that situation.

1                   So basically it's a bit like with  
2                   corruption. If you live in a society where you  
3                   expect most people to be corrupt, you'll make  
4                   more offers. If you live in a society where you  
5                   expect most people to be honest, you won't make  
6                   many offers. And the same applies to  
7                   approaching lawyers to launder money. So you  
8                   either refine your approach technique. You  
9                   learn from the rejection and think well, I need  
10                  a better explanation for why I'm coming to them.  
11                  And that's what some criminals do.

12                 Some criminals are not smart enough or don't  
13                 have a good rationale. Others learn to find a  
14                 better rationale or they may find some third  
15                 party to give them a rationale. Some  
16                 professional intermediary *consigliere*, in  
17                 Italian, who will give them the advice that they  
18                 need. No, no, you dumb ass; you should have  
19                 done X and Y when -- you should've said X and Y  
20                 when you approached them, and then they would  
21                 have taken you on. So they to become more  
22                 ingenious and more devious.

23                 A lot of assumptions are made that money  
24                 laundering is very complex. A lot of it isn't.  
25                 Some of it is. But in way you're forcing people

1           to become more sophisticated if they're going to  
2           launder their money. But that was what I was  
3           getting at. I perhaps expressed myself too  
4           cryptically there, but certainly if you just  
5           turn someone away and nobody knows you've turned  
6           them away, all they've done is lost that one  
7           opportunity. There may be others around in  
8           their environment. And it's only if they're  
9           rejected by lots of people that perhaps they'll  
10          realize, well, I can't launder my money; is  
11          there any point in continuing to commit crime,  
12          or perhaps I'll go to a different country.

13          Q     Thank you. And, Dr. Levi, I'm going to conclude  
14          my questions on this report by asking about a  
15          few more general questions regarding your  
16          analysis. First, what can you tell the  
17          Commissioner more general -- generally, pardon  
18          me, about the variation in the anti-money  
19          laundering regulation of lawyers that you saw in  
20          the countries examined?

21          A     Well, what I saw was that, on the one hand, the  
22          FATF and other bodies -- and yet many  
23          jurisdictions have been panned for this. The  
24          FATF and particularly anti-corruption  
25          organizations like Global Witness, Transparency

1 International, will complain that lawyers are  
2 not reporting enough. It's never clear how  
3 often that is, but I think it's a fair point to  
4 me that if you are a kleptocrat and you want to  
5 buy houses or you want to buy businesses in a  
6 foreign jurisdiction, then you're probably going  
7 to use a lawyer or a notary for -- and/or a  
8 notary for some of those jurisdictions -- sorry,  
9 for some of those transactions. You'll want to  
10 keep some money in your home jurisdiction  
11 because you need to bribe people locally,  
12 sweeten them for elections, if there are any,  
13 et cetera. But you'll want to have property and  
14 other assets abroad and a lawyer of some kind --  
15 by "lawyer" I include notaries, and that won't  
16 offend -- for those transactions.

17 And so if we look at the public scandals  
18 that there have been, how have the jurisdictions  
19 lawyers behaved in those cases, whether or not  
20 they've been blamed publicly. I think that's a  
21 reasonable question to ask. And Canada hasn't  
22 had as many of those scandals as some other  
23 jurisdictions -- my own, the US, Australia --  
24 but it has had real estate purchases by  
25 criminals aplenty, and so that's one of the

1                    questions that you'd address yourself to.

2                                   So the FATF wants you to do more. Is that a  
3                    reasonable request? Well, that's for you to  
4                    decide. I think that the jurisdictions that  
5                    have put the -- some of the jurisdictions that  
6                    have placed the pressure on lawyers' ethics I  
7                    think make a reasonable case, but that's only my  
8                    personal view with very limited information.  
9                    But there have been some very major French  
10                    scandals involving the corruption of major  
11                    political figures and corporations that have --  
12                    that suggest that the system -- yeah, who is  
13                    picking up on these scandals? Whose job is it?  
14                    Is it banks? Is it the lawyers? Who has been  
15                    disregarding what we now might regard as  
16                    suspicion in those cases.

17                                   So I don't think the French have done a  
18                    perfect job at all, and the Swiss haven't  
19                    either, but I think they've done something of a  
20                    job. It's just very difficult to know how good  
21                    a job in what proportion of cases that we know  
22                    about. I think Swiss lawyers, particularly  
23                    since the country's scandalization starting with  
24                    Marcos and onwards, yeah, have behaved with more  
25                    propriety and so have the banks than they used

1                   to do in the olden days. But it's very hard to  
2                   evidence that and I'm -- I suppose what I'm  
3                   saying is the jury is out. And it depends how  
4                   skeptical one wishes to be of the profession's  
5                   claims and for that you probably need to do --  
6                   which I wasn't asked to do and I didn't do --  
7                   the -- you might want to look at some of your  
8                   scandalized cases and say -- and retrospectively  
9                   say what was the role of lawyers in those cases?  
10                  Should they have done or what would it take to  
11                  get them to do more?

12                         But it's not mutually exclusive. You can  
13                   have an ethical bar rules and a pressure on  
14                   internal self-discipline at the same time as  
15                   having a reporting system. And the final point  
16                   I'd like to make on that is that, yeah, even if  
17                   you have a formal reporting system to the  
18                   financial intelligence unit, that doesn't  
19                   guarantee that they're are going to do a lot  
20                   with it. So in a sense the -- FINTRAC and the  
21                   RCMP in the case of Canada are also on the hook  
22                   for -- yeah, are they doing enough with the  
23                   cases that do get reported to them, or the cases  
24                   where they know about or believe they know about  
25                   lawyer involvement and they are frustrated in

1                   their investigations by.

2           Q        I think that connects nicely with my last  
3                   question on this report.  And if I could ask  
4                   that you turn to page 48 of the paper.  It's the  
5                   top paragraph, last sentence starting with "some  
6                   metrics."  Let me know when you are there,  
7                   please, Dr. Levi.

8           A        Yeah.

9           Q        If I could read that for you.  It says:  
10                    "Some metrics of efficiency and  
11                    effectiveness are more visible than  
12                    others, but none of the jurisdictions (or  
13                    the FATF and EU themselves) have grappled  
14                    successfully with the problem of how to  
15                    judge effectiveness (or cost-effectiveness)  
16                    in assessing lawyer performance in money  
17                    laundering and crime reduction of  
18                    different kinds."

19                   And as my last question on this report, I'd ask,  
20                   can you explain to the Commissioner what this  
21                   quote means as he considers recommendations with  
22                   respect to the legal profession in British  
23                   Columbia.

24           A        Well, I suppose it was a fancy way of saying,  
25                    what does good look like, which has been the



1 thrust of your previous questions as well. And  
2 the answer is that we don't really know what --  
3 good for what? But we don't really know what  
4 "good" looks like. The FATF has its model, and  
5 I'm not against, by the way, reporting. I think  
6 that lawyers should be held to account for their  
7 behaviour as citizens, as academics should, but  
8 nobody is trying to do a lot via me as far as I  
9 am aware. The -- lawyers do play an important  
10 role and it's right that that role should be  
11 held to account, but it's not clear what "enough  
12 reports" would look like.

13 The FATF -- I mean, I don't have the answer.  
14 I can't tell you what the metric should be. If  
15 I had, I'd be selling my consultancy services to  
16 the FATF. The -- or giving it because I'm that  
17 kind of person.

18 But they haven't -- yeah, the temptation has  
19 been, and this is true of NGOs as well, we want  
20 more. But it's not clear what would be enough,  
21 what's adequate. I think if you had a situation  
22 where there was no evidence that lawyers were  
23 putting much effort into detecting or making  
24 themselves as suspicious as they -- as we now  
25 think they should be of their clients -- just

1                   because somebody is rich doesn't mean to say  
2                   they are honest. Just because somebody doesn't  
3                   come from Russia or China doesn't mean to say  
4                   they are honest. That's a caricature, but it's  
5                   a reasonable one, I think.

6                   So the case for the prosecution is that  
7                   lawyers have not really wanted to put much  
8                   effort into that. And even the most recent  
9                   American Bar Association approach of this year  
10                  basically -- partly a reaction to the FinCEN  
11                  files, partly a reaction to other -- to the  
12                  "Lowering the Bar" exposé, even the latest  
13                  American Bar Association files, one can be said,  
14                  okay, you are now talking a much better fight,  
15                  but are you walking the walk, is a reasonable  
16                  question.

17                  So the -- asking people how do you evidence  
18                  the fact that you're now walking the walk is, I  
19                  think, the right way of approaching this. And  
20                  if you're not making reports -- and of course,  
21                  even if you are making a lot of reports, are you  
22                  making reports on trivial stuff but not on big  
23                  stuff that is more socially important? Are you  
24                  reporting on local drug dealers buying small  
25                  houses but not on kleptocrats buying large

1 mansions.

2 So for that we need some qualitative insight  
3 into the process, and the data don't speak for  
4 themselves in terms of numbers. We need to look  
5 qualitatively at the kind of reports that are  
6 made, if we're legally allowed to, and assess  
7 whether that indicates that people are doing  
8 their job in all the spheres that they should be  
9 doing their job. You know, a senior person in a  
10 foreign jurisdiction once said to me, you know,  
11 if decriminalizing drugs is the price that we  
12 pay for maintaining secrecy, it's a price worth  
13 paying.

14 You know, so we have to think about this  
15 question in the round. And what I'm criticizing  
16 FATF and the EU for doing -- for not doing is  
17 the same that I haven't done either, which is to  
18 say what counts as good; give me a set of  
19 circumstances. They've done this much better  
20 with their 2019 guidances of when I should be  
21 picking this out and when I shouldn't. Because  
22 otherwise you're in a sense blaming someone for  
23 not seeing that there's a risk. It's a bit like  
24 legal debates about recklessness and the mental  
25 element in crime.

1 I could go on, but I think I've probably  
2 expressed myself long enough on that issue.  
3 Unless you want to ask a followup question.

4 Q No. Thank you, Dr. Levi. I think that's good  
5 for my purposes.

6 MR. DAVIS: And, Mr. Commissioner, I'm about to move  
7 on to another report. Would now be a good time  
8 for the morning break?

9 THE COMMISSIONER: Yes, thank you, Mr. Davis. We'll  
10 take 15 minutes.

11 THE WITNESS: By the way -- okay. I'll stop there.

12 THE REGISTRAR: Please go on, Dr. Levi.

13 THE WITNESS: I will supply the commission with an  
14 update on the French situation and a little bit  
15 more detail on the American and Australia  
16 situation afterwards when I have finished my  
17 other duties. Okay.

18 THE COMMISSIONER: Thank you.

19 THE REGISTRAR: This hearing is adjourned for a  
20 15-minute recess until 11:25 a.m. Please mute  
21 your mic and turn off your video. Thank you.

22 **(WITNESS STOOD DOWN)**

23 **(PROCEEDINGS ADJOURNED AT 11:10 A.M.)**

24 **(PROCEEDINGS RECONVENED AT 11:23 A.M.)**

25 **MICHAEL LEVI, a witness**

1 **for the commission,**  
2 **recalled.**

3 THE REGISTRAR: Thank you for waiting. The hearing  
4 is now resumed. Mr. Commissioner.

5 THE COMMISSIONER: Thank you, Madam Registrar. Yes,  
6 Mr. Davis.

7 MR. DAVIS: Thank you, Mr. Commissioner. Madam  
8 Registrar, if I could ask that you display the  
9 document titled "The Legal and Institutional  
10 Infrastructure of Anti-Money Laundering in the  
11 UK: A Report For the Cullen Commission" from  
12 the list of documents, please.

13 **EXAMINATION BY MR. DAVIS (continuing):**

14 Q Dr. Levi, do you see the document on the screen?

15 I believe you may be muted, Dr. Levi.

16 A Yes, I am. Or was. Yes, I do see it.

17 Q Thank you. And do you recognize this as the  
18 second report you prepared for the commission?

19 A I do.

20 MR. DAVIS: I'd ask that this please be marked as the  
21 next exhibit, Mr. Commissioner.

22 THE COMMISSIONER: Very well. That will be 245.

23 THE REGISTRAR: Exhibit 245.

24 **EXHIBIT 245: Report entitled "The Legal and**  
25 **Institutional Infrastructure of Anti-Money**

1                   **Laundering in the UK: A Report For the Cullen**  
2                   **Commission," Professor Michael Levi, Cardiff**  
3                   **University**

4           MR. DAVIS: Madam Registrar, I won't need that  
5           document displayed any longer. Thank you.

6           Q     Dr. Levi, could you explain to the Commissioner  
7           the context in which this report was prepared?

8           A     I was asked by the commission staff to prepare a  
9           review of the -- how the UK system was working  
10          and in some respects not working to help --  
11          again help assist, as far as comparative work  
12          can, your deliberations as to how to change or  
13          not change your own system.

14          Q     Thank you. And what can you tell the  
15          Commissioner about the -- of the scope of what  
16          the report covers?

17          A     Well, the report tries to cover the system in  
18          the round of how anti-money laundering  
19          legislation developed in the UK. The variety of  
20          different bodies that have developed over  
21          the years to combat it and what we know about  
22          the effects of what they have done.

23          Q     Thank you. And early on in the report -- I'm  
24          looking at page 1. The paragraph under the  
25          subheading "Criminalization of Money

1                   Laundering."

2           A       Yes.

3           Q       The last sentence that begins with "what  
4                   follows." Are you with me, Dr. Levi?

5           A       Yes.

6           Q       And you write:

7                    "What follows is a review of how the UK  
8                    approached these control issues and what  
9                    we know about the effects of these  
10                   controls, which are mainly input and  
11                   output efficiency rather than  
12                   effectiveness measures."

13                   What is input and output efficiency?

14           A       Right. Well, it really reflects some of the  
15                   thinking that I and some of my colleagues have  
16                   been doing over the last few years as to what  
17                   AML is all about. And what it's all about, and  
18                   this relates to the question of effectiveness,  
19                   is reducing crime or reducing organized crime or  
20                   providing public reassurance that members of  
21                   society in more controlling positions in the  
22                   economy and society are doing their best to  
23                   combat crime.

24                   Now, personally I think the most important  
25                   of those is having some impact on underlying

1 criminal behaviour. Now, we can say -- we can  
2 have a discussion about what forms of criminal  
3 behaviour are more important than others. And  
4 we've already had a little bit of that  
5 discussion and this is not a criminology 101  
6 class, so I'll spare you that. But crime can be  
7 and often is used as just a coherent thing to  
8 reduce, but actually very often we're more  
9 bothered about some crimes than others.  
10 Terrorism being one kind of crime that we  
11 typically more bother about than anything else.  
12 And organized crime, whatever that is, we're  
13 also more bothered about.

14 So if we say, well, what do we know about  
15 the impact of anti-money laundering generally on  
16 levels of criminality or how harmfully criminals  
17 organize themselves to attack our society -- I  
18 gave evidence to the Charbonneau Commission, for  
19 example, about one specific feature of crime in  
20 Canadian society. But, you know, one might look  
21 at drugs trafficking organizations. You can --  
22 so working out what crimes cause the most harm  
23 is itself an issue which I don't expect to be  
24 digressing onto very greatly in this session,  
25 but it seems to me reasonable for the commission



1 to concern itself with.

2 But if we say well, what evidence do we have  
3 that AML has reduced any type of crime at all,  
4 we have to say that evidence is wanting. It's  
5 difficult to work out the chain of inferences  
6 you need between AML and those various things.  
7 So if we found, for example, that AML was used  
8 to lock up king pins in Canada or elsewhere,  
9 then we might say well, what's getting -- what  
10 effect did getting rid of those king pins have?  
11 It may produce some greater public reassurance,  
12 but it didn't actually reduce crime because  
13 somebody else came and took their place in the  
14 criminal organization, which is a depressing  
15 truth about much of what we know about crime.

16 But giving public reassurance is -- you  
17 could call that a goal, you could call that an  
18 effectiveness goal, if it does that, but then  
19 we'd have to measure it to show it. So even if  
20 crime itself wasn't reduced, if the number of  
21 dangerous organizations that can really have a  
22 toxic effect in our society -- and it needn't be  
23 across the whole of Canada, thinking about  
24 Canada. It could just be in Toronto or Quebec  
25 or Montreal or Vancouver. If we could show that

1           it had had -- it had stopped an organization  
2           from getting a bigger control over that area  
3           that it was aiming for, then that, I think,  
4           would be an effectiveness observation.

5                     But very often what we do instead is we say,  
6           how many SARs have we had from these  
7           organizations? You know, you in real estate,  
8           you haven't been reporting enough; you in law,  
9           you haven't been; you in banks, or these big  
10          banks have but not the little banks. That is  
11          what I would call an input and that the SAR --  
12          more SARs would be an output. And then we have  
13          to say, well, are we efficient in the way that  
14          we deal with these SARs? You know, what number  
15          of report -- FinCEN tracking -- sorry, not  
16          FinCEN, apologies -- FINTRAC data are taken up?  
17          You know, what are we doing with that data?  
18          That's an argument about the efficiency of what  
19          we do with the reports that we get both -- and  
20          you could do that both internally within the  
21          organization or in Canada as a whole or what is  
22          the state of liaison between FinCEN -- between  
23          FINTRAC and the RCMP or with local units.

24                     So those would all be discussions about  
25          efficiency. But even if their liaison were

1                   better, we might still want to ask questions  
2                   about well, what's the impact on crime? And in  
3                   a way what I and some of my colleagues have been  
4                   saying is that we've lost track of the end game  
5                   here, and we need to think harder about what the  
6                   effects of all of this are on levels of  
7                   criminality, on the arrests of really dangerous  
8                   people. Because if all we're doing is picking  
9                   off the low-hanging fruit, then we're not  
10                  achieving as much as we might hope for.

11                 Q    Thank you. And, Dr. Levi, just stepping back  
12                   for a moment. I'd like to ask you a few  
13                   questions that relate to the development --  
14                   pardon me, recent developments in the UK's  
15                   anti-money laundering regime.

16                                 And I'm looking at page 10 of your report  
17                   for reference. You note that the FATF issued a  
18                   mutual evaluation report on the UK in 2018; is  
19                   that correct?

20                 A    Yeah.

21                 Q    And what in particular did the mutual evaluation  
22                   report highlight with respect to potential areas  
23                   of improvement in the United Kingdom?

24                 A    Well, what it said, and I think everybody in the  
25                   UK system would agree, was that the financial

1 intelligence unit was not developing cases as  
2 much as it should do and that it didn't have  
3 enough resources to do that. It had also made  
4 the same criticism, by the way, in 2008. But  
5 the -- it's previous review.

6 But the -- and since then -- well, you  
7 haven't asked me about what the response has  
8 been, but the -- but that was one of the key  
9 criticisms in that report was we're not doing  
10 enough with the SARs that are coming. In other  
11 words -- and this relates to my answer to the  
12 previous question -- we've been worrying, we've  
13 been hassling a lot of bodies to report more,  
14 but we're not doing enough with them once we've  
15 got them.

16 And there were also points about feedback to  
17 the reporting agencies, about what was done with  
18 the reports. There were criticisms about the  
19 number of high-end money-laundering prosecutions  
20 and there were criticisms about how much money  
21 had been confiscated, and there were lots of  
22 other things. But those are the key ones.

23 Q Thank you. And I guess you've asked my next  
24 question is what was the response or what has  
25 the response been to date by the UK?

1           A     Well, I haven't answered it, but the -- so one  
2                     response was -- and this happens in many  
3                     situations. Yes, we will increase the number of  
4                     people in the financial intelligence unit, which  
5                     they did. There are issues about recruitment  
6                     which I won't trouble this audience with, but  
7                     the -- but are an important efficiency point.  
8                     Yeah, it takes longer to make changes than we  
9                     commonly allow for.

10                    But despite the austerity regime, my  
11                    government has increased the number of people in  
12                    the financial intelligence unit and it's also --  
13                    we realize before the FATF review that our  
14                    system, our electronic system called ELMER, was  
15                    creaking, was not really fit for the purpose and  
16                    that it needed a significant upgrade. And  
17                    that's been true ever since I first started  
18                    reviewing it in 2000. It was true of the more  
19                    significant review by KPMG, by Sir Stephen  
20                    Lander and it's still true now. And so the  
21                    government is trying to get some money together  
22                    to pay for that reform of the architecture and  
23                    look at and think seriously about what we might  
24                    need it to do if it -- to be really fit for  
25                    purpose.

1                   And at the same time the law commission has  
2                   made recommendations about money laundering  
3                   legislation and about proceeds of crime law  
4                   changes to upgrade.

5                   So I would say the reaction by the UK has  
6                   been to take the criticism seriously. There are  
7                   other recommendations, for example, about --  
8                   criticisms about Companies House and whether  
9                   it's doing a good enough job in checking the  
10                  *bona fides* of the information it receives, those  
11                  are being addressed, stimulated by the FinCEN  
12                  leaks criticisms, but they were entrained  
13                  beforehand. So not just a response to scandal.

14                  And so I think the government has tried to  
15                  address some of those points. There will be  
16                  comments about how thoroughly, with what --  
17                  whether that really meets the needs, but I shall  
18                  leave my answer there.

19                  Q    Thank you. And as an extension of your  
20                  answer there, I'd ask that you turn to page 86  
21                  of your report, if you could, please.

22                  A    Yes.

23                  Q    And at the first paragraph there, so after those  
24                  c) and d) bullet items, you write that:

25



1 directive to criminalize organized crime  
2 membership because we considered that our  
3 conspiracy legislation was a perfectly adequate  
4 substitute for organized crime membership  
5 legislation. Then in the *Serious Crime Act* we  
6 did toughen that up in particular ways. But I  
7 think the government would take the view that  
8 the sixth directive doesn't ask us to do  
9 anything we're not going to be doing anyway.

10 So I don't -- I wouldn't myself think that  
11 that was a major criticism of the UK approach.

12 Q And looking at page 108 -- you don't need to  
13 pull this up -- you write that the UK has  
14 recently proposed an economic crime levy on  
15 regulated firms.

16 A Yeah.

17 Q Is that correct?

18 A That is correct.

19 Q And what's the purpose of that levy? What can  
20 you tell the Commissioner about it?

21 A Well, it's a very interesting development. I'm  
22 not sure what the Canadian position is -- on  
23 hypothecation of taxation is. But for those  
24 readers that aren't familiar with this recondite  
25 area, the principle generally is that you can't



1 allocate particular taxes for particular  
2 functions. And that's a long-standing argument  
3 in treasury thinking in many parts of the world.  
4 So many people would think that improvements in  
5 the response to money laundering should be paid  
6 for out of general taxation, but the government  
7 thinks that there are enough demands on general  
8 taxation, so why don't we -- on a kind of  
9 polluter pays principle, why don't we try taxing  
10 regulated bodies to pay for the improvement in  
11 the -- in our response to economic crime that  
12 most people agree are needed, including  
13 regulated persons.

14 Now, I'll just add one point that may not be  
15 apparent. It's not always clear to people where  
16 economic -- where money laundering ends and  
17 economic crime begins or vice versa. So there  
18 is an active discussion -- the government is  
19 currently pulling together the responses to this  
20 proposal. There is an active discussion about  
21 whether the economic crime levy should just pay  
22 for improvements in money laundering or whether  
23 it should pay for other elements to do, for  
24 example, with improvements in response to fraud  
25 that are set out in the government's economic

1                   crime plan. Now, that's a British debate,  
2                   whether it applies anywhere else, but it's an  
3                   important question because you could say, well,  
4                   if we reduce fraud, we reduce money laundering.  
5                   So that comes back to my point about  
6                   effectiveness and what the end game is.

7                   But a lot of regulated people who don't  
8                   suffer a lot of fraud, lawyers for example, may  
9                   think, well, why should we pay for general  
10                  reductions in fraud? Yeah, there's an argument  
11                  about whether we should pay for improvements in  
12                  the anti-money laundering system. But those are  
13                  the kinds of discussions that produce -- will  
14                  probably produce a less than totally harmonious  
15                  response. But the general theory is we are  
16                  imposing or wish to impose, and preferably with  
17                  consent, an economic crime levy on regulated  
18                  bodies to get them to stump up for improvements.

19                  And you can imagine how that might apply in  
20                  a British Columbia context or in a Canadian  
21                  context. So that's -- I have no greater wisdom  
22                  on that.

23                  Q     And I'd like next to take you through, Dr. Levi,  
24                  some of the particular requirements that are  
25                  imposed on obliged entities. I might use the

1 term "reporting entity." I apologize if I do  
2 that.

3 A That's okay.

4 Q Would you -- could you briefly summarize for the  
5 Commissioner the regime or the provisions that  
6 deal with politically exposed persons. Those  
7 are PEPs.

8 A Yeah. There's been an expansion over time in  
9 what we think of as politically exposed persons,  
10 and different countries have got different  
11 definitions about how far this extends. In my  
12 report I talk about Spain, for example, includes  
13 mayors of regions and such like provincial  
14 political positions. The UK has chosen not to  
15 do that. It really applies to members of  
16 parliament, including members of the House of  
17 Lords and their families.

18 So formerly PEPs were regarded as a foreign  
19 issue. You had enhanced due diligence for  
20 foreign PEPs. The aim of this was to go after  
21 kleptocrats. This was extended under pressure  
22 to include domestic PEPs, and the domestic PEPs,  
23 yeah, are more restrictive in the UK than in  
24 some other jurisdictions.

25 If you take the view, as I do, as the

1           research suggests, that what a lot of organized  
2           criminals try and do -- they may not have  
3           national ambitions; they may have local or  
4           regional ambitions to corrupt the political  
5           process. And this was part of the allegation in  
6           Quebec, for example, and it may be also in  
7           British Columbia, and that's your province in  
8           more senses than one.

9           Yeah, so it may be -- we usually say oh, we  
10          don't have an organized crime problem because  
11          nobody is going to take over Canada but that is,  
12          I think, a theoretical mistake that countries  
13          can make that this only applies at the national  
14          level. It might be enough for them to take over  
15          Cardiff or Vancouver or, you know, some pleasant  
16          skiing resort and exert power over people in  
17          that area and set up, as the Americans did in --  
18          with the casinos in Las Vegas, for example.  
19          Taking over an area and making it a -- basically  
20          a hole in the wall town or city may itself  
21          suffice for their criminal ambitions without  
22          taking over a bigger jurisdiction.

23          And that comes back to the PEPs question  
24          because if your aim is to take over Cardiff or  
25          Manchester, then making the mayor of Cardiff a

1 PEP may be quite important if we want to know  
2 more about their assets and whether they're  
3 maybe being bought off. Or indeed a national --  
4 given the devolution in the UK, the First  
5 Minister of Wales, who happens to be a former  
6 colleague of mine and a former probation officer  
7 as well, finding out making him a PEP is a more  
8 arguable issue. But certainly the mayor of  
9 Cardiff may suffice for that reason because if  
10 you are trying to immunize yourself against  
11 intervention, depending on how local the police  
12 are as well, then that may be sufficient.

13 So that's why it's an important debate about  
14 how far PEPs extend. Of course people don't  
15 like it. I mean, I've had members of the House  
16 of Lords saying to me well, my 13-year-old  
17 daughter was asked to come in and prove to the  
18 bank that she had her driver's -- you know, her  
19 address, to bring her driver's licence in.  
20 Well, that's obviously absurd, but that's the  
21 kind of pushback that you get in that situation.

22 Q Thank you. And I'm looking at page 5 of your  
23 report now where you begin to describe the  
24 customer due diligence or CDD requirements on  
25 reporting entities in the UK and I'm not going

1           to ask you generally about those requirements  
2           but I'd turn to -- and I'm sorry, I'm going to  
3           make you change page here -- page 28, Dr. Levi,  
4           please.

5           A     Yeah.

6           Q     And you write that the approach in the UK is not  
7           to be prescriptive when it comes to customer due  
8           diligence; is that correct?

9           A     Well, it's not absolutely subjective either.  
10          You know, banks and -- yeah, there are lists of  
11          identifiers that financial sector, and for that  
12          matter law firms, are expected to require people  
13          to divulge when they open an account. So if you  
14          don't have a passport or your driver's licence  
15          or utilities bills in your own name, then it's  
16          hard to open an account or certainly hard to  
17          open more than a very basic account. There are  
18          EU rules about everybody's entitlement to open a  
19          basic account which muddy the waters somewhat.

20                 But -- so it's not absolutely prescriptive.  
21          In other words, if you can come up with an  
22          alternative that satisfies the joint money  
23          laundering steering committee and/or the  
24          treasury, then you're free to use those as  
25          alternatives.

1           Q     And my question on is that is what are your  
2                   views on the risks or of the utility of having a  
3                   flexible approach to verifying customer identity  
4                   like you've just described. Flexible with  
5                   reason, I suppose I should add, but ...

6           A     Well, this is partly an economic stimulation  
7                   issue. I mean, if you want -- challenging banks  
8                   who are normally more electronic fintech bodies  
9                   to start offering people accounts and  
10                  facilities, then asking them to turn up with a  
11                  physical presence with physical documents may  
12                  kill them off because they don't have a branch.

13                         So I think it's reasonable to say in the  
14                         current world -- and I actually did some work on  
15                         this as early as 2000, which seems a long long  
16                         time ago in electronic terms. Yeah, if you are  
17                         asking them to verify their identity, some of  
18                         the big payment card data providers such as  
19                         Experian, TransUnion, Equifax have their own  
20                         extensive data set and can probably identify  
21                         most people adequately electronically rather  
22                         than using low tech methods.

23                                 So I would say, you know, it's up to them to  
24                                 demonstrate that they're doing a good job and  
25                                 that should be tested, and it should be tested

1 not just at the same time but afterwards. If  
2 abuses start appearing and you can show that  
3 it's the result of this slackness, then you can  
4 say well, actually that's not as good a control  
5 as we thought it was. So you've got to see  
6 anti-money laundering as a much more dynamic  
7 space than we used to.

8 Q Thank you. And, Dr. Levi, if we could just turn  
9 to reporting for a moment. I suppose I don't --  
10 I'm going to ask you, are there any entities in  
11 the UK that are omitted from reporting that you  
12 think should be included?

13 A That's a very good question. No, I don't think  
14 there are. We've a very broad ranging and  
15 extensive regime. I mean, one might say --  
16 let's just take some -- a couple of areas that  
17 might be relevant to Canada and to  
18 British Columbia in particular, though. I don't  
19 know your territory as well as you do.

20 We might say well, some corrupt people who  
21 are organized criminals want to send their kids  
22 to posh schools, private schools or, as we say  
23 in the UK, public schools. The -- and, you  
24 know, it's a question I posed 20 years ago when  
25 I was on the steering committee of the



1 performance and innovation unit review  
2 recovering the proceeds of crime. It's a  
3 relevant question. How many public schools make  
4 suspicious activity reports? How many of them  
5 get paid in cash? How many cruises that people  
6 go on -- not to launder their money in the sense  
7 of reinvest it, but just to spend money that  
8 they've acquired from crime which itself is a  
9 laundering offence. How many people pay for  
10 their cruises in cash? So you might say how  
11 well are those bodies, private schools,  
12 universities, how many of them are paid in cash?

13 The answer is they'll probably be making  
14 deposits in the bank or some such institution  
15 and it's up to the bank to do the KYC -- the  
16 ongoing KYC and customer due diligence, which is  
17 not just an entry issue; it's an ongoing  
18 process. And so if patterns of large cash  
19 deposits or jewellery deposits or whatever are  
20 starting to be made, are you really monitoring  
21 those things or not.

22 So I would say it's more a question of  
23 thinking of clever ways in which people could  
24 actually plausibly launder money and making sure  
25 that you're trying to monitor those than

1 bringing new people into the net. For example,  
2 our regulation of charities is internationally,  
3 I think, excellent for counterterrorism as well  
4 as other crime and much better than most places,  
5 and it's partly the result of this long  
6 consciousness. I'm not producing a Pollyanna  
7 approach to Britain. There are many areas which  
8 are done badly, but the -- but I think clearly  
9 real estate has become a much more open area,  
10 but I wouldn't say that we are lacking anybody  
11 who should be regulated.

12 Q Thank you. And looking at page 41, you describe  
13 that the UK's financial intelligence unit  
14 operates a consent regime with respect to  
15 conducting certain transactions.

16 A Yes.

17 Q What can you tell the Commissioner about that  
18 consent regime and how it operates?

19 A Well, this actually was introduced -- it wasn't  
20 just lawyers who wanted a consent regime, it was  
21 also bankers. But because the UK legal  
22 profession got involved early into the  
23 anti-money laundering regulation business, they  
24 and bankers pressed for a regime in which -- you  
25 didn't want to be charged with money laundering

1           if you allowed a transaction to go forward, so  
2           they set up a system. The national crime agency  
3           likes to call it DAML for defence against money  
4           laundering, but that's an alternative phrase.  
5           Not an alternative fact but an alternative phase  
6           for the consent regime.

7                        So if you wanted to proceed with a  
8           transaction that you had made a suspicious  
9           activity report on, you could apply to the  
10          financial intelligence unit for consent to allow  
11          you to go forward with that transaction. Now,  
12          that used to have to happen within 31 days. In  
13          other words, if they didn't say no within  
14          31 days, you could go ahead. But then -- and  
15          you can imagine how this would be difficult in  
16          the case of -- let's say you were looking at  
17          some kleptocratic -- suspected kleptocratic  
18          transfers or some major fraud scheme and you  
19          didn't have the resource or you needed some  
20          cooperation, financial information from another  
21          jurisdiction to assess whether you could really  
22          allow that to go forward.

23                       And so that was extended to the period  
24          was -- the police can if a senior officer makes  
25          an application, that period can be extended, but

1                   essentially it's to allow you to do acts that  
2                   could later be interpreted as money laundering.  
3                   So if we apply that to the FinCEN files cases,  
4                   if that was in the UK, they could ask for  
5                   consent to make those transfers, and the FIU  
6                   could say yes, as they do to almost all the  
7                   requests that they get.

8                   It's a burden to process these quickly, and  
9                   they accuse the legal profession and the banks  
10                  of having too many defensive suspicious activity  
11                  reports and too many DAML requests.

12                Q    Thank you.  And one of the items I expect that  
13                    the commission will -- Commissioner will hear  
14                    evidence about is a conversion ratio as it  
15                    relates to STRs in Canada or SARs in the UK.  
16                    Can you describe to the Commissioner what the  
17                    conversion ratio is.

18                A    Well, in essence it's the conversion of an SAR  
19                    into some kind of -- it's normally a criminal  
20                    justice action, but it needn't be that.  For  
21                    myself, I see criminal justice as simply one  
22                    mechanism amongst others to try to reduce crime  
23                    and the harm of crime.  So it could be a  
24                    regulatory action, for example, or it could be  
25                    the closing down of a business or the closing

1 down of some environmental harm that was being  
2 done. So I think there's scope for a wider  
3 conception of a conversion ratio than just a  
4 criminal justice outcome.

5 But way back in 1992 I conducted an exercise  
6 where I took a thousand SARs in the UK and  
7 looked at what happened to them. I actually  
8 kind of traced their effects, and the -- I found  
9 out that .83 percent or thereabouts had some  
10 impact, either some kind of asset freeze or a  
11 major investigation. You know, led to something  
12 that you could identify.

13 Now, you could have a throw threshold for a  
14 conversion ratio, namely it pinged against an  
15 existing suspect and you found out more about  
16 their assets than you knew before. That would  
17 be what I would call a low threshold conversion  
18 ratio issue. Or you could have something -- you  
19 could set the bar higher. I think a low  
20 conversion ratio would itself be useful, but one  
21 of the things I tried to do was to distinguish  
22 between how many SARs led to the identification  
23 of somebody who wasn't previously suspected, and  
24 that ratio was very low. Yeah, it's different  
25 over time and in different jurisdictions. And

1                   you might say well, what we care about is  
2                   whether it identifies foreign corrupt dictators.  
3                   You know, you could set your criteria as you  
4                   wish.

5                   But I do think that that is important. If  
6                   you don't have any conception of a conversion  
7                   ratio, then it's easy for the system just to  
8                   think well, we're -- just gathering more data is  
9                   good in itself. And we have to say well,  
10                  gathering data is good only if you -- a  
11                  reasonable amount leads to something.

12               MR. DAVIS: Thank you. And, Mr. Commissioner, if I  
13                  could just pause for a moment. I do note the  
14                  time. We have three participants who have given  
15                  estimates of their examination of Dr. Levi. I  
16                  wonder if it would be useful to scope whether  
17                  those estimations are still accurate just so I  
18                  can know when I should be finishing up with my  
19                  examination.

20               THE COMMISSIONER: Yes. Ms. Herbst, I think you had  
21                  been allocated half an hour.

22               MS. HERBST: Thank you. And that's a very good  
23                  question. Given what Mr. Davis has covered  
24                  already, I think it's more likely to be in the  
25                  15- to 20-minute range.

1 THE COMMISSIONER: Thank you. Mr. Westell.

2 MR. WESTELL: Thank you, Mr. Commissioner. It's more  
3 likely to be in the five minute range for me.

4 THE COMMISSIONER: Okay. And Mr. Usher.

5 MR. USHER: I'll still be five or ten minutes.

6 THE COMMISSIONER: Thank you, Mr. Usher. All right.

7 So you have your parameters, Mr. Davis.

8 MR. DAVIS: I do, Mr. Commissioner. Thank you.

9 **EXAMINATION BY MR. DAVIS (continuing):**

10 Q So, Dr. Levi, could you describe to the  
11 Commissioner the purpose and powers of the UK's  
12 FIU. With that, describe where it's situated  
13 organizationally, please.

14 A Right. Okay. So basically there are three  
15 types of FIU. There's the financial sector,  
16 maybe central bank, FIU; administrative FIU; and  
17 there's a police FIU. The British had gone for  
18 a police FIU. So it's located within the  
19 National Crime Agency, which is our body for  
20 dealing with serious organized crime, and in a  
21 sense that is where it's always been when it  
22 started.

23 It was in the National Criminal Intelligence  
24 Service, and then it was in Serious Organized  
25 Crime Agency and now it's in the National Crime

1 Agency.

2 So in a sense there enforcement personnel  
3 who are -- they report to the Director of the  
4 National Crime Agency.

5 Q Thank you. And what sorts of powers are  
6 available to the FIU? And by that I mean -- I'd  
7 ask, for example, can FIU or do they perform or  
8 conduct observations on their own initiative?

9 A They do but as the mutual evaluation report  
10 shows, they don't do it enough for -- compared  
11 to some other financial intelligence units,  
12 compared to, say, the Belgian or the Dutch.

13 The British have always had the view, and  
14 this also applies to our fraud cases, is that  
15 what you should do is be a central recipient of  
16 SARs.

17 If you don't mind I'm going to take my  
18 jacket off because it's getting quite warm.

19 The idea is that the FIU is a central  
20 repository and it may do some preliminary checks  
21 and it has access to quite a lot of databases  
22 and it has non-police agencies like, for  
23 instance, revenue and customs, which I suppose  
24 is the equivalent Revenue Canada, and the  
25 Department of Work and Pensions who deal with



1 social security fraud attached to it. The  
2 police and the FIU don't have direct access to  
3 all of those databases, so it's not a total  
4 fusion centre, but it is a -- but they can ask  
5 them to check on their database whether Michael  
6 Levi is on theirs and come back with an answer.  
7 And then they make an initial decision who to  
8 send the case to, if they think there's any  
9 plausible prima facie basis for investigation.

10 Now, that's come in for some criticism.  
11 Lots of people think they should do more, and  
12 they have increased their staff. But given the  
13 volume of hundreds of thousands of reports that  
14 we get, clearly, you know, you have to think as  
15 you would in Canada or anywhere else, if you've  
16 got 120 people, say, how much work can they do  
17 on that number of reports?

18 Q Thank you. And I take it that that's looking at  
19 page -- starting at page 53 you discuss this  
20 topic, the ratio of reports received in the UK's  
21 FIU compared to the staff available.

22 And at page 55 can I confirm that you write  
23 that there have never been sufficient resources  
24 to analyze more than a minority of SARs in the  
25 UK; is that correct?

1           A     Yeah, perhaps that's a harsh judgment.  The --  
2                     let me briefly explain.  It depends how much --  
3                     it depends what you mean by "analyze."  You can  
4                     check quite quickly if somebody is in your  
5                     system and that's done electronically, and they  
6                     have good access to that.  So if somebody is  
7                     wanted or there's an ongoing investigation into  
8                     someone, then they can analyze to that extent  
9                     whether the report fits in and whether it would  
10                    be fruitful to pursue it further.

11                    But the system as it is at the moment, even  
12                    in the old days when it was manual or more  
13                    manual than it is today, there were never enough  
14                    people.  And when I first started there were --  
15                    researching this area, there were about 11,000 a  
16                    year reports in the UK.  There weren't enough  
17                    people even then to analyze fully.  And I know  
18                    that this has been an issue in Canada, an issue  
19                    in Australia, an issue in the US, an issue more  
20                    or less everywhere.  So -- and I've said even in  
21                    Switzerland, which operates a high level of  
22                    prescreening, it's also an issue now, which it  
23                    didn't used to be.

24            Q     And this might seem trite, but what is the  
25                    impact of that, the fact that the FIUs struggle

1           to analyze more than a minimum amount of the  
2           reports they receive?

3           A     Well, that may not be the -- that is not  
4           necessarily the end of the exercise because even  
5           if the FIU doesn't analyze it itself, it may  
6           pass it on to a police or social security agency  
7           who do analyze it more. So in a sense it's too  
8           hard a test to say, the FIU doesn't analyze it,  
9           so nothing happens. It doesn't mean to say that  
10          nothing happens. It's just that it becomes part  
11          of an intelligence picture which may never reach  
12          any fruition in a full investigation, but it  
13          could.

14                 So in a sense you could say, well, it  
15          creates some area of risk for offenders they --  
16          it creates some area of risk for offenders that  
17          if you didn't have a system, they wouldn't be  
18          facing it. So other than that it's more of an  
19          information database, and I don't really want to  
20          get into the whole debate about where does  
21          information end and intelligence begin.

22                 But the -- but it doesn't mean to say it's  
23          useless, but it is frustrating for reporters  
24          because reporters think well, we put a lot of  
25          effort into this; in a way it's cost our

1 organization money in preparing this report;  
2 we're not happy that more isn't done with it  
3 because we think there's something in this;  
4 otherwise we wouldn't have reported it in the  
5 first place.

6 And you can say well, yeah, it's a suspicion  
7 system, and that's all it is. Yeah, it's -- it  
8 generates a set of information about the  
9 financial dealing of offenders that otherwise  
10 would not exist.

11 Q Thank you. And I might have got a bit ahead of  
12 myself, but do I have it correctly that you say  
13 that the FIU could receive these reports, not  
14 analyze them and forward them on to law  
15 enforcement?

16 A Yeah, it would do -- normally it would do some  
17 checks against databases.

18 Q And what --

19 A Whether you call that -- whether you would call  
20 that "analyzing" is a moot point. So yes, it  
21 could because let's assume you had --let's  
22 assume somebody made a suspicious activity  
23 report in me in Cardiff. My residence would be  
24 on that information. The FIU might -- if it got  
25 the information in, it might say well, we

1                   haven't got anything about him in our system, so  
2                   we'll -- but we'll pass it on to the South Wales  
3                   Police to check it out, see whether it's of any  
4                   interest to them.

5           Q       Understood. So my question to that is what is  
6                   the threshold for disclosure to law enforcement,  
7                   if there is one?

8           A       There isn't one. Well, it would be variable.  
9                   There isn't any legally mandated threshold, but  
10                  the information is available only to approved  
11                  financial investigators. So unless you've done  
12                  the training. I mean, not every police officer  
13                  or has access to the database. So you have to  
14                  be an approved financial intelligence officer.  
15                  Approved financial investigator.

16          Q       Is there any sort of legislative language to the  
17                   effect that the FIU needs to be satisfied, for  
18                   example, have reasonable grounds of suspected  
19                   money laundering to disclose to police, or is  
20                   it --

21          A       No.

22          Q       Thank you, Dr. Levi. And although we discussed  
23                   it briefly in the context of your first report,  
24                   I'd like to ask you some questions now on  
25                   beneficial ownership.

1           A     Okay.

2           Q     What types of beneficial ownership registries  
3                 exist in the UK?

4           A     Right. Yeah, sorry. I'm just trying to find  
5                 out where I have put -- I put some down to make  
6                 this easier. But the -- we have a beneficial  
7                 ownership register that is in process. We went  
8                 through a period where what we had was not a  
9                 beneficial ownership register but a persons of  
10                significant interest register. And there were  
11                arguments about what the thresholds of that were  
12                and should be.

13                         There's quite a lot of dissatisfaction about  
14                         how it operates, partly, I suspect, because it  
15                         discourages entrepreneurialism. You know, the  
16                         more checks you make business people go through,  
17                         the more inclined they might or might not be to  
18                         take their business elsewhere. And so  
19                         collecting information on persons of significant  
20                         interest is regarded as burdensome for fee  
21                         owners, et cetera. But when David Cameron, the  
22                         former prime minister, held the big  
23                         anti-corruption summit, a lot of the  
24                         non-governmental organizations who were busy  
25                         proposing that felt that they should be a

1 universal and fairly equal pressure to have UBOs  
2 and have public registries of beneficial  
3 ownership.

4 And so we've gradually moved towards that  
5 ourselves and we've put pressure on some of the  
6 offshore jurisdictions. The overseas  
7 territories, for example, to have a public  
8 beneficial ownership registry. And different  
9 countries have moved at different speeds to do  
10 that.

11 What else can I say? So yes, we do have  
12 one, and it will be improved.

13 Q And what are the obligations, Dr. Levi, on --  
14 and companies registered in the UK with respect  
15 to beneficial ownership? What sort of  
16 information do they provide?

17 A Well, they have to declare, you know, who the  
18 beneficial owner is. If it's a company, we're  
19 tight -- the proposals are to tighten up the  
20 ability of foreign companies to own assets. I  
21 mean, historically they were just taxed more,  
22 but their beneficial ownership was not even  
23 necessarily identified but certainly not  
24 disclosed.

25 But the shift has been towards requiring

1                   them to reveal who they are for people with an  
2                   interest. And this has been the big area of  
3                   tension as to who should have access to the  
4                   registry. Should it be totally public, or  
5                   should it only be available for persons with an  
6                   interest? Should it be available to  
7                   investigative journalists, for example? Should  
8                   it be available to absolutely everyone? And I  
9                   think the politics of that are still playing  
10                  out, but the thinking is that it should not be  
11                  totally open.

12                Q     Thank you.

13                A     Yeah.

14                Q     Sorry, does the registry apply to all  
15                  corporations?

16                A     Yeah.

17                Q     And I'd ask, then, Dr. Levi, what your view  
18                  would be on a beneficial ownership registry that  
19                  exempted from registration public companies.  
20                  So, for example, a registry that only includes  
21                  privately incorporated companies, do you have  
22                  any thoughts on that that you can provide to the  
23                  Commissioner?

24                A     I think that the -- in a way, if you have a --  
25                  it depends on the public company's disclosure



1 obligations. If the public company is required  
2 to identify shareholders, including beneficial  
3 ownership of shareholdings, then doesn't that  
4 achieve the same goal, would be my response to  
5 that. If it doesn't require -- if the  
6 registry -- if public companies are not required  
7 to identify the beneficial ownership of shares,  
8 then on the grounds of equity they probably  
9 should be included in the register because the  
10 harm that is aimed at is the harm of people  
11 being allowed to accumulate wealth, including  
12 wealth from crime, without people knowing who  
13 they are.

14 Now, there are economic arguments about that  
15 situation over, for example, what happens if  
16 you're stalking a company, should you have to  
17 reveal your hand and show all the various  
18 connected parties who may be trying to build up  
19 a stake in the company to take it over. That's  
20 one kind of argument. Some people think that  
21 you should have to divulge that, and that's why  
22 the connected parties rule, others that you  
23 shouldn't.

24 But I think the argument is weak that public  
25 companies shouldn't be on the register if they

1 don't have to divulge who their beneficial  
2 owners are. Otherwise if you can go to the  
3 company register and find out the same  
4 information for the company separately, it's  
5 more effortful. And in a sense you could say  
6 well, so why isn't it included because if you've  
7 to collect that information anyway, why don't  
8 you put that on the same register as everything  
9 else is on?

10 Q And speaking of the data, can you describe to  
11 the Commissioner what level of vetting, if any,  
12 takes place of the data submitted to Companies  
13 House and whether there have been any changes in  
14 that respect recently?

15 A Yes. It used to be none. So whatever you sent  
16 in, that was it. And so I think that was partly  
17 because Companies House didn't have staff. It  
18 didn't -- also didn't want the legal liability.  
19 Once you -- it's a bit like clearing snow  
20 outside the house: once you start clearing it,  
21 you may have some liability for not having done  
22 it very well, whereas if you leave it alone, you  
23 don't have any. And that, I think, is a rather  
24 cruel but fair summary of the position -- ever  
25 Companies House was created it has done that.

1                   So it didn't vet any of the information that  
2                   was put -- was sent to it. Now that's not the  
3                   case and yet -- and reporters are expected to --  
4                   you know, if they notice any discrepancies, for  
5                   example, between the information they hold and  
6                   what's on Companies House, then they're supposed  
7                   to inform Companies House of those discrepancies  
8                   and the staffing level is being built up to be  
9                   able to deal with those.

10                  But, for example, it's been an issue in  
11                  off-the-shelf companies, a lot of the frauds  
12                  that are now arising. In the government  
13                  bounceback loan schemes, et cetera, people have  
14                  bought companies off the shelf. They've put  
15                  data, which has been unverified onto it, they've  
16                  got loans from the banks and they've basically  
17                  run those as scams. And without fuller  
18                  transparency it's difficult to clamp down both  
19                  on fraud and money laundering.

20                  Q     Thank you. And just to finish up on this  
21                  section quickly. Looking at page 81 of your  
22                  report, you note that the register for trusts in  
23                  the UK is not public; is that correct?

24                  A     Yeah.

25                  Q     And, Dr. Levi, what risks does a trust registry

1 attempt to address even if it's not public?

2 A The idea of it, the trust registry will be  
3 public but not open to absolutely anyone. The  
4 harms that it seeks to address is to make it  
5 easier for -- if there is a financial  
6 investigation into someone, to make it easier.  
7 If you don't collect the data in the first  
8 place, then it then becomes that much harder to  
9 find out.

10 So if somebody, whether in the UK or in  
11 Canada, is trying to pursue a financial  
12 investigation against -- and the intelligence  
13 leads to a trust, then if there's a register  
14 of -- registry of the trust, even if that  
15 registry is private, they can get more  
16 information than they would otherwise be able to  
17 do if they had to start doing that from scratch.

18 But in a sense that's why we're moving  
19 towards a more public register so that we can  
20 provide that information to -- more easily to  
21 people who have an interest and say -- there's a  
22 big debate about whether that should be open to  
23 all. And if you're trying to do  
24 data-matching -- and this also applies to your  
25 earlier question about public companies and

1 private companies.

2 If what you want to know is whether Michael  
3 Levi -- you know, what companies does Michael  
4 Levi have an interest in, which would be a  
5 reasonable thing for a financial investigator to  
6 want to find out, then if you have all that data  
7 in the same place or you have easy access to  
8 both of those data sets, it's easier to  
9 construct social network analysis diagrams -- as  
10 the RCMP and others do or FINTRAC do, it's  
11 easier to construct a social network analysis of  
12 all the relationships between me and everyone if  
13 you have all that data available.

14 And as we move towards more artificial  
15 intelligence and mass data, which has its own  
16 risks, of course, the more important it is that  
17 that data should be accessible. And that's why  
18 I talk about the tectonic plates a little bit  
19 between privacy concerns and anti-money  
20 laundering concerns, which vary from country to  
21 country.

22 Q And that segues into the next topic that I  
23 wanted to discuss with you, Dr. Levi. And I was  
24 wondering what you could tell the Commissioner  
25 about the impact of large-scale private data on



1 bankers -- were you going to ask me about this  
2 separately? If so, I'll leave it till then.

3 Q I was going to ask you if your -- that --

4 A Okay, I'll leave it till then.

5 Q Okay.

6 A But, I mean, the mass -- yeah, another area of  
7 mass intelligence is automated number plate  
8 recognition, which is national. So basically  
9 any car travelling anywhere is likely to be  
10 picked up on the system. I don't think that's  
11 of any particular importance to this committee,  
12 but it could be if you were looking at  
13 travelling offenders, drug dealers, for example,  
14 you could demonstrate where they met. Whether  
15 you could locate them at particular points in  
16 space and time to connect them with other  
17 people. Data from telephones, you have mass  
18 based. All of that can be used in a connected  
19 intelligent way to put people together in places  
20 so that if they say they weren't, they can be  
21 caught out in a lie.

22 And if you don't know about the connections  
23 in the first place, you can bring in fresh  
24 connections and build up your social network or  
25 criminal network analysis in that kind of way.

1                   And there are people who work on that kind of  
2                   issue in Canada as well.

3           Q       Thank you.  And you did reference a question  
4                   that I had.  And I'd ask you, Dr. Levi, what is  
5                   a super SAR, a super S-A-R, and how does it  
6                   relate to the answer you just gave?

7           A       Yeah, well, one of the dissatisfactions in  
8                   the -- both in the financial community and in  
9                   the national crime agency is that you can get  
10                  lots of separate SARs on the same people or the  
11                  same address.  How do you -- you know, can you  
12                  connect them together because their connection  
13                  might not be immediately apparent.  This is  
14                  partly a database problem.

15                         But the whole idea was that the -- in some  
16                         cases the proceeds of crime regulated entities,  
17                         that's banks and financial institutions,  
18                         information was shared either on the regulated  
19                         entities' own initiative or at the request of  
20                         the National Crime Agency to share the data in a  
21                         super SAR so that -- and it relates to your  
22                         earlier question about developing intelligence.  
23                         So they get the whole -- more of the picture.  I  
24                         know the British cabinet secretary once said  
25                         half a picture can be the truth, but they -- so



1           they get a much bigger picture than they would  
2           do otherwise if they were just separated in  
3           little strands.

4           That isn't happening quite as much as was  
5           hoped, but it is allowed for under -- the  
6           *Criminal Finances Act 2017* allowed for these  
7           super SARs to happen. There are often -- so  
8           it's a private/private as well as private/public  
9           issue. So the people in national crime  
10          authority -- the National Crime Agency, sorry,  
11          can say, can we -- anybody know any information  
12          about X? And create a super SAR that way. Or  
13          the banks themselves may talk to each other,  
14          though not as much as they would like to, and  
15          get one by themselves.

16          So this is partly a gateways issue, and I  
17          understand enough about the Canadian system to  
18          know gateways issues are very important. But  
19          it's about building a bigger picture to make it  
20          more likely that there will be some action.

21          Q       And on that topic of information sharing,  
22          Dr. Levi, one of the areas I suspect the  
23          Commissioner will hear evidence about is that of  
24          integrated policing models. So a policing model  
25          where lawyers, forensic accountants, et cetera,

1           are part of a team so to speak. And what can  
2           you tell the Commissioner about the UK's  
3           experience, if any, with integrated models,  
4           lawyers being, you know, front lines on the  
5           policing effort.

6           A     Well, for a long time the only organization that  
7           really kind of did that, apart from in Northern  
8           Ireland during the troubles, was the serious  
9           fraud office. And I was asked to review the  
10          investigation prosecution trial of serious fraud  
11          in 1992 by the Royal Commission on Criminal  
12          Justice because it was the only real area where  
13          lawyers supervised criminal investigations.

14                 It's much more common in continental Europe  
15          and of course in the US than it is in the UK.  
16          And in the Serious Fraud Office they had a  
17          lawyer who would be the case controller, and  
18          they would look at the most plausible lines of  
19          action in a case in consultation with the police  
20          and with accountants and other lawyers working  
21          at the SFO and work out the best lines of  
22          inquiry, who you needed to -- they had extra  
23          powers to get information, and who you would  
24          most need to go to in what order. So the idea  
25          was that this would be a kind of lawyer-led

1 investigation.

2 And in my report I made the rather cruel  
3 analogy that the lawyers were on the top floors  
4 of the building, the accountants were in the  
5 middle and the police were at the bottom. But  
6 that worked okay. But the police in the UK and  
7 elsewhere are jealous of their autonomy, if they  
8 have any, so it's not always a model that always  
9 appeals. And besides, as I noted, the external  
10 lawyers who are then brought in, if they were  
11 brought in at a late stage might countermand  
12 what the lawyer -- that the case controller  
13 lawyer thought and say no, we should really have  
14 done this, and I want you to focus on that.

15 So it doesn't always work as well as it  
16 should have done. But that is a model. One the  
17 royal commission's interest was to see if that  
18 would reduce miscarriages of justice as well as  
19 improve effectiveness. And the miscarriage of  
20 justice problem wasn't that significant. It was  
21 in -- allegedly in cases like Guinness -- I'm  
22 happy to go into this but I am assuming that you  
23 don't want me to. That -- it was in the case of  
24 Guinness where there was an appeal to the  
25 European Court of Human Rights which was

1                   successful about Serious Fraud Office powers.

2                   But what I argued was that in a sense it was  
3                   the role rather than whether somebody was a  
4                   lawyer or not that might lead to miscarriages of  
5                   justice. So lawyers don't have a peculiar  
6                   immunity against behaving oppressively.

7                   Individual lawyers might, but as a -- yeah, it  
8                   was -- if you were in a kind of "we must get the  
9                   crims culture," it's difficult to stay distant  
10                  from that, which is often why for, say, legal  
11                  professional privilege you have external lawyers  
12                  to assess whether or not the material is  
13                  privileged or not, and that's still the case.

14                  The other area in which you have it, in  
15                  Police Scotland there's -- Scotland has more of  
16                  a lawyer-led tradition than England and Wales.  
17                  And there is also a very small number of  
18                  forensic accountants who are often part of the  
19                  team. So teamwork in a smaller institution can  
20                  work very well. I know you've had your  
21                  difficulties with integrated unit, IMETs over  
22                  the years, but the -- so I would say it's a good  
23                  thing to have lawyers involved early, whether or  
24                  not they run the thing, because you very often  
25                  need -- admissibility is often a very key issue

1           in most major money laundering and organized  
2           crime cases, and so the earlier you can get good  
3           legal input, the better.

4                     The turf war of who runs it, I'm not sure  
5           there's good evidence about it. So it's about  
6           creating a challenge culture.

7           Q       Thank you. And, Dr. Levi, as my last question  
8                     I'd ask you what are the key lessons that the  
9           Commissioner should consider from the UK regime?

10          A       Well, I think that given where -- every country  
11                     starts from a different point. I think lawyer  
12           regulation in the UK has worked pretty well.  
13                     I'm a member of the law society's money  
14           laundering task force, but not for very long --  
15           I mean, I haven't been there for very long.

16                     The -- but it's -- that's been going for a  
17           couple of decades, and it's been a useful --  
18           it's useful to have a robust dialogue with the  
19           professions, whether it be lawyers, whether it  
20           be casinos, whoever it is. Things work better  
21           if you can bring people on board rather than  
22           just dictate. And I think -- you know, would I  
23           say there isn't a lot of money laundering going  
24           on in the UK? No, I wouldn't. But I'd say that  
25           we're probably better equipped. The area of

1 high-net-worth individuals remains a problem,  
2 and the area of covert beneficially owned  
3 companies remains a problem. That's an issue  
4 about how far you're going to go into it and how  
5 important that is to you.

6 And foreign-owned companies, that is less of  
7 an issue than it was, but it's still a big  
8 problem. Issues of golden passports or their  
9 equivalents, also a problem.

10 But I think one of the things that you can  
11 learn is that it's important to have a dialogue  
12 with the bodies and if you -- you need to be  
13 firm in saying well, you know -- so show us,  
14 prove to us what you're doing, but take them  
15 seriously because there are lots of minutia of  
16 how things are going to affect that you then  
17 have to do a cost-benefit analysis as to whether  
18 gains are worth the cost.

19 The other element is seeing AML as a  
20 hydraulic system that if you have a huge  
21 bunching in the reporting system but you are not  
22 doing very much with it, you've got to say to  
23 yourself, first of all, who is using the system?  
24 Is it just the RCMP? Are they using it much or  
25 enough? What about the regulatory bodies?

1           Because you can incapacitate organized crime  
2           groups by sharing work between the environmental  
3           bodies. This is what I mean by the  
4           administrative approach to organized crime  
5           prevention. So you can bring in lots of  
6           agencies into that process if your system wants  
7           to allow that to happen. That's a legal and  
8           political choice.

9                        So who should have access to the data? In  
10           our system the environment agency does, and they  
11           also do proceeds of crime cases. So how far do  
12           you want to extend that to the financial  
13           regulators, et cetera. And nationwide or on a  
14           province basis? That is a political question  
15           for you.

16                       But if you don't share -- if you don't allow  
17           for any sharing between the provinces, then  
18           crooks can operate separately using different  
19           legal bodies more easily in different places.  
20           How big a harm is that? I don't know. But I  
21           think information sharing is not an unalloyed  
22           good, and I know you have constitutional tests  
23           about that which are important.

24                       But you need to think about this a holistic  
25           way is the key lesson, and there are bits that

1           we are learning in the UK. Perhaps we've been  
2           tolerant of international crooks a little bit  
3           too much, or super rich from Russia and China,  
4           more tolerant than we should have been and we're  
5           now realizing some of the harms is that can flow  
6           from that. But whether that is too late or not  
7           is an open question.

8                        But I think the involvement and the  
9           continuous engagement of the private sector in  
10          that process, but it needs to be a robust  
11          dialogue, is one of the key messages. The other  
12          is what about restraint and confiscation. Early  
13          restraint, I would say, has been -- or the lack  
14          of it has been a key failing in the British  
15          system. We now have account freezing orders  
16          again under the *Criminal Finances Act 2017*,  
17          which are easier to apply. The unaccounted  
18          wealth orders have got the -- more publicity,  
19          but account freezing orders are also important.

20                       So learn from our failure to do enough about  
21          that because once the money is gone, it's very  
22          difficult to get it back. So you need to think  
23          about account freezing as well as final  
24          confiscation, which has been an issue in lots of  
25          countries and the British are improving but are



1 not there yet.

2 MR. DAVIS: Thank you, Dr. Levi.

3 Mr. Commissioner, those are my questions for  
4 this witness.

5 THE COMMISSIONER: Sorry, I was muted. Thank you,  
6 Mr. Davis.

7 Ms. Herbst.

8 MS. HERBST: Thank you, Mr. Commissioner.

9 **EXAMINATION BY MS. HERBST:**

10 Q And thank you, Dr. Levi and Mr. Davis, for  
11 reviewing in particular area more general report  
12 on the framework in the UK in such detail, and  
13 so that leaves me with a few questions. I just  
14 want to touch on a couple of points.

15 And just as -- by way of introduction, you  
16 will no doubt see my name on the screen, but I  
17 am Ludmila Herbst. I'm a counsel for the Law  
18 Society of BC.

19 A Yeah.

20 Q And just -- you and Mr. Davis had discussed the  
21 defence of assumed consent that's found in the  
22 UK, and I believe you also mentioned in passing  
23 in that answer and there's also a reference at  
24 page 8 of your report, which is exhibit 245, to  
25 a phenomenon called defensive reporting or

1                   precautionary reporting or sometimes alleged  
2                   overreporting.

3           A     Yes.

4           Q     I can see that the two might be somewhat --  
5                   somewhat intersect, but is that a further and  
6                   other phenomenon even apart from the defence of  
7                   assumed consent?

8           A     No, no, it's just the same.  It's basically the  
9                   attempt to -- perhaps I'll use the word  
10                  anathematize the process so that -- and it's  
11                  difficult to know where the truth lies, but the  
12                  national crime agencies say that they're being  
13                  basically used as a device for covering law  
14                  firms and others against the risk of money  
15                  laundering prosecution by reporting stuff and  
16                  putting pressure on them to give consent so that  
17                  they can do the business, get paid without  
18                  running the risk of legal liability.  I think  
19                  that's a fair summary of the position.

20                         The lawyers of course deny that, and I'm not  
21                         at liberty to talk about the detailed cases  
22                         we've discussed in the money laundering task  
23                         force, but there is -- there are sometimes  
24                         differences about what constitutes a good or a  
25                         bad report.

1           Q     Okay. Thank you, Dr. Levi. And then I just  
2                    have one question about just a passing reference  
3                    in your legal profession-specific report. So  
4                    that's -- I don't think it's necessary to turn  
5                    to the page, although of course I'm just going  
6                    to give you the reference.

7           A     Okay. I'll listen.

8           Q     Okay. It's exhibit 244, and it's on page 35.  
9                    And you note -- and I ask this because earlier  
10                   this week there was a bit of a conversation  
11                   about the situation in Canada about sole  
12                   practitioners and how frequent they were, and  
13                   you mentioned that, I think in the UK context,  
14                   one-person firms are increasingly rare. Is that  
15                   a recent phenomenon, or ...

16          A     Yeah, I think it's a recent -- well, it's  
17                   basically the result of cutbacks in legal aid.  
18                   And the -- you know, in some of my earlier work  
19                   which dealt with fraud by lawyers one of the  
20                   concerns of the legal profession as a whole as  
21                   well as a government was that small firms and  
22                   one-person firms -- not necessarily the same  
23                   thing -- were most at risk of committing fraud  
24                   because when their income declines or when they  
25                   fall into bad company they -- there's nobody

1 monitoring them. Nobody's watching the shop.

2 And every firm has to have a money

3 laundering reporting officer in the UK, and if

4 you're a big firm you have to have a kind of

5 board-level person, money laundering compliance

6 officer at a higher level to ensure the money

7 laundering reporting officer is doing -- and to

8 have enough bite with the board to be able to

9 put the case no, we shouldn't be taking this

10 presidential figure, or not, in the bank. And

11 the -- and so you need somebody with clout.

12 So there's an argument about how high up the

13 food chain the money laundering reporting

14 officer should be. And that's an important

15 question because they need enough clout. Now,

16 in small person firms those people or the same

17 people.

18 Q Right.

19 A So you can have an internal dialogue, but you

20 don't have a separation of powers. And so for

21 from the point of view anti-fraud and the point

22 of view of, you know, are you being suspicious

23 enough of this person. And the task force and

24 consultants spend quite a bit of time going

25 around the country explaining to lawyers what



1 BC branch and for the Criminal Defence Advocacy  
2 Society.

3 I just wanted to ask you to the extent of  
4 your familiarity with the specific anti-money-  
5 laundering measures in place with respect to the  
6 Law Society of British Columbia.

7 A Relatively little. I know the outlines, but  
8 the -- but I've not made a specific detailed  
9 study of the British Columbia arrangements. I  
10 would -- I've not had that pleasure or  
11 opportunity and -- yeah, I would and I have  
12 assumed that the commission and yourselves  
13 between you would know more about  
14 British Columbia that I could in a very brief  
15 study.

16 MR. WESTELL: Thank you very much. That is my only  
17 question.

18 THE COMMISSIONER: Thank you, Mr. Westell.

19 And, Mr. Usher, on behalf of the Society of  
20 Notaries Public of British Columbia.

21 MR. USHER: Yes. Thank you, Mr. Commission.

22 **EXAMINATION BY MR. USHER:**

23 Q Professor Levi, I'm counsel for the Society of  
24 Notaries Public. They're the statutory  
25 regulator of common law notaries in BC that do

1           legal work mostly in the area of real estate  
2           transactions in the same manner as lawyers do in  
3           this province. A couple of questions.

4                     In your written material and your oral  
5           evidence you expressed your concern about the  
6           quality of research in this area. So for  
7           example, in exhibit 26 from your earlier  
8           presence, you -- when talking about the gravity  
9           model, you state:

10                    "More recently, Walker and Unger have made  
11                    some highly questionable high-end  
12                    guesstimates based on heroic assumptions  
13                    and extrapolations."

14                    Do you stand by that? Is that a fair -- still a  
15           fair comment?

16           A        Yes, it is a fair comment. I would say there's  
17           been a lot of pressure on academics to come up  
18           with a figure. Everybody wants the figure. I  
19           can perfectly well understand why people want a  
20           figure. I and the people I work with who are  
21           kind of reasonably good have avoided that  
22           temptation. And personally if I see any figure  
23           without a very large range, I am immediately  
24           very suspicious. Unger is a perfectly -- and  
25           there's no aspersion on them. There are

1 elements of the gravity model that I find  
2 unpersuasive, but they might feel the same about  
3 my work.

4 But given how difficult it is to know --  
5 where I start from is a common sense position.  
6 What do we know about the proceeds from  
7 different kinds of crimes? And how good, how  
8 confident are we -- how reasonably confident are  
9 we that our judgment about those things is good?  
10 For some things in some countries, like drugs in  
11 the US, we have reasonable -- reasonably good  
12 confidence. We know a lot more about bribery --  
13 about transnational bribery than we used to. Is  
14 that the total data set? No, I just don't know  
15 how we come to good estimations of that. But  
16 that doesn't mean to say that I don't believe  
17 the figure is very large.

18 Q Yeah.

19 A It's just when people -- as public understanding  
20 of science issues show, people don't really know  
21 what trillions means, by and large. What is the  
22 difference between billions and trillions? You  
23 can say it mathematically, but I don't think  
24 that makes a lot of sense to people.

25 What we do know is that if we tot up the



1 amount of money that is confiscated around the  
2 world, and that's not an easy thing to do, but  
3 let's say it 2 billion a year. And if we have  
4 proceeds of crime in the trillions and  
5 confiscations in the low billions, that's a heck  
6 of a gap. So what's happened to all that money.  
7 And that is an annual gap. So over 20, 30 years  
8 what's the size of that gap? So you only have  
9 to start asking those kinds of questions to  
10 worry.

11 Now, some of it may be put to political ill  
12 use, you know, and you don't need to read books  
13 like *Putin's People* by Catherine Belton, one of  
14 the latest fine books on this issue, or  
15 *Kleptocracy* to be aware that there's a lot of  
16 malevolent money around the place that is it  
17 doing harm. But whether it's as big as that  
18 figure, that I don't -- I am skeptical about.  
19 So I do stick to that.

20 Sorry, that was a long-winded answer.

21 Q No. Thank you. Are you aware of any research  
22 that would show that the anti-money laundering  
23 regime you've described in the UK has made any  
24 difference in housing affordability? It's a  
25 continued topic around the world certainly in

1 England and here?

2 A I think that is very important question, and  
3 also in Australia and even New Zealand and parts  
4 of the US. No, nobody has looked at that.  
5 My -- there has been some work done in Miami on  
6 the impact of geographic targeting orders on the  
7 real estate market, and that's quite  
8 interesting. I can -- I'll send that over to  
9 the commission and they can distribute it, if  
10 you want.

11 Q Thank you.

12 A Or directly. But the -- proceeds from crime is  
13 likely to impact in three different areas. One,  
14 the purchase of low-value housing where the  
15 amount of cash, particularly if reporting  
16 requirements are low, might not stand out that  
17 much but there that can be purchased by drug  
18 offenders and any other type of criminal to  
19 build up a portfolio of housing they can then  
20 use to -- for human trafficking, for rent, to  
21 legitimize their assets if they do it in a  
22 corporate way. So there's that bottom area.  
23 There's -- of low-cost housing. There may not  
24 be any of that left in Vancouver.

25 Then there's the middle area where people

1           can buy in via -- often corporations with low  
2           beneficial ownership accountability and perhaps  
3           using electronic funds or perhaps even having a  
4           difference in the price between what they  
5           actually pay and what is formally recorded as  
6           paying, which is sort of, of course, one of the  
7           notaries' kind of issues. But that can happen  
8           in some places.

9                   And there's at very high-end stuff, which is  
10           where the kleptocrats and the super rich  
11           criminals can buy up high-end housing, and  
12           that's where a lot of us -- and of course these  
13           have cascading effects down. So as somebody who  
14           knows a bit about economics, those can reduce  
15           the amount that is available in particular areas  
16           and drive up the average price. But I think --  
17           the reason I've elaborated a bit -- I know the  
18           hour is late. It is for me too. But the reason  
19           I'm elaborating is because that's the kind of  
20           concrete analysis that you need to think about.  
21           Of course if you've been involved in a fraud  
22           Ponzi scheme, then the -- if people are looking  
23           out for cash, they might miss you because you  
24           have electronic funds, you have a corporate  
25           fund. Then it depends if the fraud is being

1                   investigated or not. And many frauds sadly are  
2                   not. So you might get away with it,  
3                   uninvestigated.

4                   But of course notaries -- I don't know about  
5                   the Canadian situation, but notaries in  
6                   continental Europe often see themselves as they  
7                   do in France as kind of offices of the state as  
8                   well as, you know, they do in France and the  
9                   Netherlands as well as lawyers. So there may be  
10                  a sort of a cultural difference as I know there  
11                  has been in levels of objection to anti-money  
12                  laundering and its application to the legal  
13                  profession in France where notaries have been a  
14                  lot quieter.

15                Q    Thank you. And, as you may know, our notaries  
16                    in British Columbia are subject to FINTRAC and  
17                    our money-laundering rules.

18                A    Yeah.

19                Q    In your research and your looking at the various  
20                    legal societies and these rules about money  
21                    laundering, are any of them discussed -- is  
22                    there any discussion of potential of exposure of  
23                    harm to lawyers and others, these so-called  
24                    gatekeeper? If they're the ones saying no to  
25                    the criminal lawyer, are there people looking

1           at, you know, is there a potential for physical  
2           or other harm to the lawyers and people who are,  
3           in the absence what seems of effective criminal  
4           law, they're being -- the ones being asked to  
5           stand up and hold up their hand as a gatekeeper  
6           and say no to the suspected money launderer?

7           A     There hasn't been any systematic research on  
8           that issue.  Some of my colleagues in Sweden who  
9           work for the Swedish Council on Crime  
10          Prevention -- I can get hold of the report --  
11          have looked at intimidation of -- but it's more  
12          of public officials than of lawyers because  
13          lawyers in Sweden have come late to the party,  
14          anyway.

15                 But I would expect from anecdotal cases that  
16          I know about that I don't think I can put into  
17          the public arena now, that there have been some  
18          -- that there have been pressure on lawyers.  
19          And I started out by -- and in my report, there  
20          have been blackmail issues.  You know, lawyers  
21          are not -- or not all lawyers are immune from  
22          vice.  And to the extent that they get drawn  
23          into vices, whether that be gambling, sex or  
24          expensive vacations, then they become -- they  
25          fall within the sphere of influence.

1                   So it's not just a question of being strong  
2                   armed. The strong arming may come later. Or  
3                   the revelation of blackmail, as we've seen in  
4                   some of the recent email blackmail cases,  
5                   lawyers might be blackmailed into going along  
6                   with stuff.

7                   Now, I don't know, to come back to the  
8                   earlier question whether, that happens mostly in  
9                   single person. It can also happen in bigger  
10                  firms. Maybe you're falling behind with your  
11                  contribution to the firm and you're worried  
12                  about being fired. Or perhaps people are  
13                  threatening you. Yeah, it's easy to find out  
14                  where people live.

15                  So these issues of personal protection for  
16                  lawyers, which formerly used to be just a law  
17                  enforcement issue, may come into place, but I  
18                  don't really know of any research that has told  
19                  us a lot about that kind of thing.

20                  Q    Thank you. And a couple of sort of final  
21                  things. There's been a lot of talk about the  
22                  large-scale international flow of money. I take  
23                  it there's not research, or that you have not  
24                  raised here, any idea that looks at those -- the  
25                  international money flows and what percentage

1                    might be related to predicate crime. In other  
2                    words flows, that are -- then would become the  
3                    basis of money laundering.

4                    A        Yes, that's -- I'll be short. The European  
5                    Union requires member states to estimate the  
6                    size of their illicit economy because it's part  
7                    of the calculation of the European budget. I'm  
8                    not sure what kind of review process goes on  
9                    about those estimates, but that is available  
10                   data. How much of that is a cross-border flow  
11                   is not so clear.

12                                The -- there are, you know, some more  
13                                sophisticated studies that have tried to do  
14                                that. Either I'm not a good enough economist  
15                                or -- which is entirely possible, or it's not  
16                                absolutely clear how large a flow that is. We  
17                                can pick up some ideas from -- from flows from  
18                                developing countries run by elected or dictator  
19                                kleptocrats about what that might look like from  
20                                them, but between advanced countries or between  
21                                developed -- between global north countries is a  
22                                lot harder.

23                                The Global Financial Integrity and other  
24                                bodies have aimed to do that. This is not the  
25                                time for an assessment of that. But there is

1           some skepticism about the scale, but it's  
2           plausible that -- yeah, if -- what we know from  
3           the cases we know about. Coming back to  
4           Rumsfeld, the known knowns and the known  
5           unknowns. What we know from the cases we know  
6           about is that in general people like drugs  
7           traffickers and people traffickers like to keep  
8           their money reasonably close. Yeah, so they buy  
9           property either in the land where they live or  
10          the land where their family came from, if that's  
11          different, and build up a family relationship.  
12          They may do other stuff we don't know about, but  
13          we don't know about that.

14                 And so what we -- apart from, if you like,  
15                 economist macro analysis, we know  
16                 disappointingly little about the cross-border  
17                 investments of most criminals. We know my  
18                 colleague Melvin Sudine [phonetic] has done some  
19                 work on -- from Dutch data about the flow of 500  
20                 Euro, notes often back to Colombia. You know,  
21                 Colombians working in the Netherlands bring the  
22                 notes back in exchange for a free holiday, but  
23                 after that some of the suggestions, some of it  
24                 goes to Panama. But those kinds of things are  
25                 not tracked at a micro level enough, even going



1 back to the Charbonneau inquiry, what happened  
2 to the money that was paid in bribes in that  
3 case was not analyzed enough. So I will rest on  
4 that.

5 We know something, but the macroeconomics is  
6 still a matter of dispute, but we know that it  
7 would be significant. But it's not likely to be  
8 money from fraud and tax evasion and large scale  
9 corruption than anything else.

10 Q Yeah. Thank you, Professor Levi. One final  
11 point, quickly. One example that's often talked  
12 about and is well known in Vancouver, the large  
13 amount of Asian money in the Vancouver real  
14 estate market. I think it's accepted that  
15 China, for example, has limits on how much money  
16 can be moved out of the country. But in your  
17 view does that mean that essentially all or most  
18 of the money used to purchase real estate by  
19 Chinese nationals in Vancouver necessarily is  
20 evidence of predicate crimes and therefore  
21 necessarily money laundering?

22 A What a wonderful last question. I think that's  
23 plausible. If it's moved out of China -- if it  
24 was in China to start with, then, yeah, people  
25 would have to demonstrate how it got there.

1                   That's extremely difficult thing. British --  
2                   one of the problems facing our law society and  
3                   our banks is that -- proof of wealth or proof of  
4                   income in cases like that. Yeah, if we're  
5                   looking at source of wealth and source of  
6                   income, that's a really tricky thing to  
7                   demonstrate from people coming from emerging  
8                   economies. In your case it's probably China.  
9                   In our case it's China plus Eastern Europe and  
10                  other parts of Asia and Africa.

11                  But the -- but yeah, if they can't show it  
12                  came from outside China, my prima facie reaction  
13                  would be that it's plausibly -- yeah, if your  
14                  money laundering legislation includes foreign  
15                  rule evasion, including the export of -- the  
16                  unauthorized export of capital, then the  
17                  answer would be yes.

18                  MR. USHER: Thank you very much, Professor. Thank  
19                  you very much for your contribution to the  
20                  commission, and the evidence has been much  
21                  appreciated.

22                  THE WITNESS: I've tried my best. [French spoken.]

23                  MR. USHER: Thank you. *Merci*. That's all my  
24                  questions. Thank you.

25                  THE COMMISSIONER: Mr. Westell, do you have any

1 re-examination based on Mr. Usher's? I will  
2 take silence as a no.

3 Ms. Herbst.

4 MS. HERBST: No, I don't. Thank you.

5 THE COMMISSIONER: Thank you. Mr. Davis?

6 MR. DAVIS: Nothing arising, Mr. Commissioner. Thank  
7 you.

8 THE COMMISSIONER: Thank you. Thank you, Dr. Levi.  
9 I appreciate that it is quite a bit later there  
10 than it is here. You must be getting close to  
11 9:30 your time. So we very much appreciate you  
12 taking the time and responding to the questions  
13 you have. It has been helpful.

14 THE WITNESS: It's a privilege to be able to help  
15 our Canadian cousins as far as I'm able.

16 THE COMMISSIONER: Thank you. You are of course  
17 excused from any further testimony.

18 THE WITNESS: Thank you.

19 **(WITNESS EXCUSED)**

20 THE COMMISSIONER: I take it, Mr. McGowan, there's  
21 nothing more to deal with today?

22 MR. MCGOWAN: Nothing further today,  
23 Mr. Commissioner.

24 THE COMMISSIONER: All right. Thank you. We will  
25 then adjourn until Monday morning at 9:30.

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Thank you, Mr. Davis.

THE REGISTRAR: The hearing is now adjourned to  
November 23rd, 2020, at 9:30 a.m. Thank you.

**(PROCEEDINGS ADJOURNED TO NOVEMBER 23, 2020)**