

Weeding Through the Challenges of Banking the Cannabis Industry

Barbara I. Keller, CAMS

The first U.S. Chapter webinar of 2021, held on January 26th, featured a wide-ranging conversation between Dan Stipano of Davis Polk and Steve Kemmerling of CRB Monitor discussing the state of cannabis banking in the United States, including predictions on the chances of new legislation passing with the change in administrations and control of the Senate. The webinar was ably moderated by chapter board member Lauren Kohr. Both speakers were optimistic that we'll see some change in the legislative landscape, but cautioned attendees that it would be incremental, not dramatic, change. Neither expected cannabis to be de-scheduled any time soon. Each bill that had been introduced in the last Congress is different and the "devil is in the details." For now, the biggest obstacle is that cannabis is illegal at the federal level.

The speakers cautioned that, no matter what happens with legalization of cannabis at the federal level, it will remain a high-risk business. Any bank that is thinking about banking marijuana-related businesses (MRBs) has to do a cost-benefit analysis. This won't change even if some sort of move toward legalization comes about through one of these bills. Due diligence and monitoring are expensive – banks have to weigh the business opportunities against the cost. Most states have at least one bank that provides services to MRBs and the number of banks has been rising. Although technically the Justice Department's Cole memo was rescinded in the last administration, neither law enforcement nor the regulators have "declared war" on this business. Enforcement actions against any banks that provide services usually do not refer to MRBs as the specific issue.

There is an unwritten set of best practices that is developing for banks that provide services to MRBs; however, there is no updated regulatory guidance on expectations. The 2014 FinCEN guidance¹ has not been updated – it still applies. Former AG Barr expressed support for the underlying principles in the Cole memo, and now we'll have to see what the Biden Administration does. Both speakers stressed the importance of KYC for banks that provide services to MRBs. If a customer says they only provide hemp-products, banks need to be vigilant and still treat that business as high-risk. If a business deals in both cannabis and hemp, the proceeds would need to be segregated. It's really tricky, but the starting point is having reasonably-designed procedures in place to deal with whatever risks the client presents.

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Note from Chapter Co-Chairs Dennis Lormel & Sepideh Rowland

As we continue to progress towards emerging from the last year and a half of the pandemic, we note the resiliency of financial institutions which have had to not only embrace the experiences of a fully remote work force, but also be agile enough to address emerging payments and evolving risks related to AML/CFT and Fraud.

The U.S. Capital Chapter has been on the forefront of delivering virtual webinars focused on these emerging risks, whether they relate to domestic terrorism, elder financial exploitation, or banking high-risk customers. We are committed to getting timely information and resources in the hands of our members and have strived to deliver more frequent virtual webinars over the past year.

If you are interested in volunteering for the Program Committee or the Chapter's Advisory Board, please contact us. You can reach us either through LinkedIn or via email at USCapitalChapter@acams.org.

Tentative upcoming Event Topics in 2021:

July – Proliferation Financing
September – 9/11 20-Year Anniversary Retrospective
October - Ransomware
November - TBD
December – 2021 Year in Review and Predictions for 2022

Please visit our website for up-to-date information:
<http://www.acams.org/acams-chapters/u-s-capital/#events>

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¹ BSA Expectations Regarding Marijuana-Related Businesses, FIN-2014-G001.



MRBs did not qualify for Paycheck Protection Program (PPP) loans, but many applied for and received them anyway. The speakers advised any bank that inadvertently made a PPP loan to an MRB to follow the FinCEN guidance. Banks that participated in the PPP loan program should expect regulatory scrutiny of these loans in their next exam.

In closing thoughts, Mr. Stipano said it's all about risk, risk, risk - banks need to understand and have procedures and controls in place to manage it. The critical question is how to balance the risk against the reward. Prosecution risk is not that great, the reward can be substantial, but it needs to be balanced against the cost. Mr. Kemmerling commented that if a bank wants to provide services to MRBs, it has to have robust, clear policies and procedures in place, along with well-documented clear definitions of the various related products – marijuana, hemp, CBD, etc. These are all needed for an effective program. Ms. Kohr advised banks to have sound risk-management processes starting with a board resolution on down. Banks should reach out to their regulatory partners – there should be full transparency across the bank, the risk-management team, and the regulators.

Domestic Terrorism: Understanding the Evolving Threat Environment

Rachele Byrne

On February 26th, the U.S. Capital Chapter held a virtual learning event to discuss domestic terrorism moderated by Chapter Co-Chair, Dennis Lormel. The event featured counter-terrorist financing experts from both the public and private sectors, including Lester Joseph, chapter board member and Manager of the Global Financial Crimes Intelligence Group at Wells Fargo, Frederick Reynolds, Chief Compliance Officer at BREX, and Peter Sullivan, FBI Counterterrorism Division Senior Financial Private Sector Outreach Liaison.

Mr. Lormel started the discussion by noting how law enforcement and AML professionals have started to evolve our thinking on terrorism. While the past focus has been on foreign terrorism, homegrown and domestic violent extremists have emerged as a new and urgent threat, as evidenced by the Capitol riot on January 6th. The new threat is more decentralized than ever, posing a greater challenge for law enforcement and financial institutions alike. While the fund flow for domestic terrorism is similar to foreign terrorism, there are still big questions around how we define the threat and, more importantly, how we respond to it.

Mr. Sullivan kicked off his comments by reviewing the legal definitions of terrorism. He stated that, while the Foreign Terrorism Organization definition has been associated with federal charging statutes and thus a lower threshold to investigate, domestic terrorism does not have the same built-in charging statutes, which makes any acts that fall under the domestic terrorism umbrella more difficult for law enforcement to investigate. In order to investigate domestic terrorism, law enforcement must ensure the following three threshold conditions are met: 1) federal crime; 2) threat of violence; and 3) existence of extremist ideological motivations. Mr. Sullivan also echoed Mr. Lormel's introductory comments, noting that the challenge with law enforcement identifying and stopping domestic terrorism is rooted in the de-centralized nature of it. Recent examples of it have involved smaller groups that are very isolated from the rest of society. These small and isolated groups rely on using hidden messaging, which makes it more difficult for law enforcement to collect human intelligence (HUMINT). Given the high bar for prosecuting domestic terrorism, law enforcement often faces challenges in finding federal charges that are applicable for these cases. Mr. Sullivan stated law enforcement relies heavily on its private sector partners to help identify and provide tactical information related to potential domestic terrorist activity. He noted that law enforcement has seen a large increase in SARs filed recently in relation to domestic terrorism cases and thanked financial institutions for their continued partnership in this space.

Providing a perspective from the private sector, Mr. Reynolds stated that the ongoing challenge with identifying terrorist financing transactions is that a lot of transactions have indicators that - outside of context - may or may not be suspicious, which makes it difficult for financial institutions to identify and report them. While they have identified the



use of payment messages as one way to help identify potential domestic terrorism-related transactions, there is no one way for the private sector to easily identify and flag these types of transactions for law enforcement. Mr. Reynolds said that institutions have found that the best approach to tackle the issue has to be data-based. More and more financial institutions are using proactive analysis of customer behaviors through modeling in order to build new typologies for terrorist financing activity. This reliance on data to develop new models is not limited to just larger banks. He noted that, while larger banks have more data, smaller banks often have a better understanding of their customers and what the data mean. Ultimately, the most important thing for any financial institution, regardless of the size, is to make sure they are sharing information with their law enforcement partners and vice versa.

Mr. Joseph commented that banks do have a tremendous amount of data; however, financial institutions will always need law enforcement to provide context for certain types of activity to help determine what transactions need to be reported. He noted that the FBI provides threat overviews, which is very helpful for institutions to focus their resources to the greatest threats. He also added that banks are in a really complex position when it comes to domestic terrorism in terms of fulfilling all of their legal obligations while balancing an obligation to protect customer privacy. Unique to domestic terrorism, there are complexities around ensuring that the private sector doesn't interfere with "First Amendment rights" while still reporting activity that may be related to violent activity.

Other topics of discussion included how law enforcement develops domestic terrorism cases, funding models, common red flags or indicators, as well as challenges with using classified information or security clearances in financial institutions.

Elder Financial Exploitation

Robert Pasley

On March 22, the U.S. Capital Chapter presented an informative luncheon program on Elder Financial Exploitation. The moderator of the program was Sepideh Rowland, Managing Director of K2 Integrity and co-chair of the U.S. Capital Chapter. The presenters were Anne Archer, Fraud Risk Manager of Atlantic Union Bank, and Jacqueline Blaes-Freed, Assistant Director of the Consumer Protection Branch of the Department of Justice (DOJ).

They discussed the trends in elder financial exploitation, as well as relevant cases and investigations. They indicated that there is at least \$3 billion in losses each year in this area. Losses involving non-stranger exploitation account for the majority of elder abuse losses, but losses involving strangers located overseas are growing.

Law Enforcement Corner

Dennis M. Lormel

In skimming through the articles summarizing the outstanding webinars this Chapter has presented thus far this year, I was struck by their diversity and the passion of our presenters. I was equally captivated by the level of expertise our speakers possess. I was also impressed by the diversity and impact of the subjects presented, which include banking cannabis, domestic terrorism, elder fraud, illegal wildlife trafficking, and getting to know our SAR Review teams. Coupling those sessions with the forthcoming forums addressing public corruption followed by proliferation financing, a consistent theme resonated with me. That theme is what I refer to as the three "Cs": cooperation, coordination, and communication.

The success and best practices we discuss during the Chapter learning events emanate from partnerships. The foundation for successful partnerships is built on cooperation, coordination, and communication. Whether the collaborations are formal or informal; government agency to agency; financial institution to institution; or public sector to private sector; success depends on partnerships. Partnerships depend on cooperation, coordination, and communication.

It is satisfying to know that the U.S. Capital Chapter presents learning and networking events that consistently promote partnerships. From a law enforcement perspective, the better the cooperation, coordination, and communication, the better the partnerships; the better the prospects for successful prosecutions. The better the prospects for successful prosecutions, the better we protect the economy and national security.

Thanks to everyone for your support and participation. Working together, we all make a difference.



Contrary to a common misconception in this area, elders do report cases related to financial exploitation. However, while older people tend to lose more money due to financial exploitation than younger people, younger people tend to report actual losses more often than older people.

The most frequent type of elder abuse scam involves con artists posing as government officials, frequently pretending to be from the Social Security Administration or the Internal Revenue Service. However, business imposter scams are on the rise. In addition, romance-related scams are increasing, but are vastly underreported. COVID-19 oriented frauds, involving fake cures and treatments are also very high, but are decreasing. It was noted that a common pandemic fraud has been phishing designed to obtain information about a person's identity under the guise of arranging for a vaccination for the person. The pandemic scams have been aggravated by the loneliness it engendered, especially with regard to romance scams; by elders' lack of familiarity with financial matters; and by elders using digital services more frequently.

There was considerable discussion in the program about money mules and the effort to warn the public against being tricked into sending money to people pretending to be in need or promising easy, high returns of the money. Law enforcement agencies are cooperating with one another to fight this problem and have brought over 2,300 cases involving money mules. On the positive side, approximately 80-85% of people who were warned against being money mules ceased the activity.

The presenters explained that there are two DOJ warning letters, one more stern than the other. The DOJ has served over 2,000 such warning letters and has conducted 450 interviews related to the warning letters. The difficulty for financial institutions is providing an elderly person with sufficient warning without seeming to interrogate them or make them uncomfortable.

The presenters emphasized the importance of Suspicious Activity Reports (SARs) in helping the DOJ direct resources to where they are most needed. As an aside, it was noted that the US Capital Chapter will host a program on SAR review teams in May (see article below).

The presenters reminded us that even small cases are important to report because some cases may be linked and may lead to larger, more important cases. In one case, there were 60 defendants in a \$300 million telemarketing scheme that involved the aggregation of small dollar amounts. It was noted that Delaware and North Carolina require the reporting of elder abuse to Adult Protection Services (in addition, of course, to the Federally-required FinCEN reporting).

It was pointed out that victims of financial scams frequently become victims of additional scams. Consequently, financial institutions need to ensure that their staff can identify such victims and warn them appropriately.

The takeaways for the program included the need for financial institutions to contact their local law enforcement/SAR review team, the elderly outreach coordinator for the local law enforcement agencies, and their local adult protective services. In addition, there is a continuing need for enhancing customer awareness and education and for providing front-line training.

Follow-the-Money: Tracking the Illegal Wildlife Trade Money Flows

Dr. William Scott Grob

On April 28th, the U.S. Capital Chapter held a virtual webinar, moderated by Chapter Board member Barbara Keller, to continue raising awareness of the fight against the illegal wildlife trade (IWT). In June, 2020, FATF published research highlighting the private sector's role in combatting this illegal trade. In October, 2020, ACAMS and the World Wildlife Fund for Nature (WWF) created a free two-hour IWT course to assist our community.

Throughout the discussion, Marcy Forman, CAMS, CGSS, from Citibank's Investigative Unit, and Dr. William Scott Grob, CAMS, CGSS, from ACAMS, provided insights into the IWT typology. The typology is a complicated process incorporating many participants in the harvesting, trading, trafficking, importing, exporting, processing, possessing, and consuming of wild fauna and flora. The private sector needs to hear the call to action.

A \$7bn to \$23bn problem

Organized crime is attracted to the illegal wildlife trade because of the high profits, up to \$23bn, and low penalties. These criminals have added this typology to their existing narcotics, arms, and human trafficking and smuggling businesses. Consequently, the anti-financial crime (AFC) community is well acquainted with evaluating high-risk jurisdictions, industries, and products and connecting those dots into suspicious behavior patterns.

Typical Hotspots – the trade has various distinguishing features, such as geographic and transportation corridors between source and end-market consumers, higher risk industries and companies (such as zoos, ranches, and pet stores), and vulnerable goods which use illegal flora or fauna. While the corridor between Africa and Asia is well known for Elephant Ivory and Rhino horns, the US has a similar problem around the trafficking of birds, reptiles, and exotic fish. No country is immune to this problem.

Connecting the dots

The investigative process behind the IWT is remarkably similar to many complex cases involving actionable intelligence, an understanding of the red flags, the natural and legal persons, digging transactional detail, and performing link analysis from the data.

Like other large financial institutions, Citibank works with law enforcement partners to integrate intelligence and third-party news behind suspicious wire transfers. This activity is often connected to other crimes, such as narcotics, illegal arms, and human trafficking. An IWT analysis will incorporate customer data, such Know-Your-Customer (KYC) data, possible connections from the customer due diligence, adverse media, the transactional details and behavior, and the suspicious nature prompting the review.

IWT illustrated case

The IWT typology is most often linked with narcotics, illegal arms, and human trafficking. Criminal syndicates use a variety of third parties and intermediaries to insulate themselves. IWT is only one example of products which are vulnerable for exploitation by criminals.

In the presented case study, we learned of the importance of ongoing partnerships with law enforcement and non-profit organizations to assist in information sharing. While financial institutions may hold material elements of the trafficking puzzle, collaboration with law enforcement and non-profits helps to accelerate getting clarity into the total picture.

Chapter members can participate in three ways:

1. Take the ACAMS free two-hour IWT course;
2. Review their organization's policies for inclusion; and
3. Evaluate whether the typology needs to be incorporated into their risk assessment.

ACAMS and WWF, supported by the Basel Institute on Governance, The Royal Foundation of the Duke and Duchess of Cambridge, and United for Wildlife, have developed a free training certificate for individuals seeking to protect their organizations from the threats of illicit finance linked to the IWT.

Additional resources:

1. ACAMS-WWF (free two-hours) Ending Illegal Wildlife Trade
<https://www.acams.org/en/training/certificates/ending-illegal-wildlife-trade>

2. FATF's Money Laundering and the Illegal Wildlife Trade Guidance
<https://www.fatf-gafi.org/publications/methodsandtrends/documents/money-laundering-wildlife-trade.html>
3. EGMONT/ECOFEL | Financial Investigations into Wildlife Crime report
<https://egmontgroup.org/en/content/ecofel-financial-investigations-wildlife-crime-report-now-available-0>

Getting to know your SAR Review Team: The Cornerstone for Effective Public-Private Partnerships

Barbara I. Keller, CAMS

SAR Review Teams bring together Law Enforcement from across a jurisdiction to proactively seek out criminal activity suggested in SAR narratives. On May 10th, the U.S. Capital Chapter was proud to host a ground-breaking webinar with record attendance that focused on how SAR Review Teams in D.C., Maryland, and Virginia are proactively paving the way for meaningful SAR feedback and enhanced information sharing techniques between financial institutions and Law Enforcement.

The webinar was organized and expertly moderated by U.S. Chapter Board and ACAMS Advisory Board member, Lauren Kohr. The panelists were John W. Borchert, Assistant United States Attorney, Fraud Section, D.C. Financial Crimes Task Force; Shea Matthew Gibbons, Assistant United States Attorney, United States Attorney's Office, Eastern District of Virginia (EDVA); Ilissa M. Gould, Asset Forfeiture & Money Laundering Coordinator, Office of Legal Programs, Executive Office for United States Attorneys; Steve Gurdak, Initiative Manager, Northern Virginia Financial Initiative, Washington/Baltimore HIDTA; Joan ("Cassie") Mathias, Assistant U.S. Attorney, District of Maryland; and Darryl L. Tarver, Assistant U.S. Attorney, District of Maryland.

Attendees heard directly from these six SAR team representatives within the beltway on ways to partner with local SAR Teams to understand current financial crime trends, provide better SAR filings, and get the "SUPER" SARs directly in the hands of Law Enforcement. In addition, the SAR Team representatives discussed how they are pioneering pathways to work alongside financial institutions and provide valuable feedback.

The DOJ created the first SAR Review Teams in 2006 and they are in almost all judicial districts. SAR Review teams are made up of federal, state, and local law enforcement representatives. Most districts have a "coordinator" who is responsible for keeping the team organized. Some teams set a minimum dollar threshold amount for review, but this varies among the teams. The teams generally meet monthly to review SARs filed in their districts and are looking for "actionable" SARs. They focus on DOJ priorities, such as national security, opioids, trafficking, and fraud, as well as other crimes prevalent in their area. The purpose of these meetings is not to develop existing cases; rather, it is to use SARs to identify potential new investigations and cases. The meetings also serve as an opportunity to deconflict so that law enforcement agencies are not duplicating efforts and wasting valuable resources.

SAR Review teams are strong believers in public-private partnerships and working with financial institutions to combat illicit financial activities. Some SAR Review Teams reach out to financial institutions on a regular basis. Some teams hold periodic networking meetings in advance of the monthly Team meeting to bring financial institutions together to discuss trends. SAR Review Teams work collaboratively with financial institutions to develop typologies, which result in better SARs.

Ms. Mathias discussed an initiative of the Maryland SAR Review Team to develop a relationship with a local bank that is prominent in their state. Once a quarter, bank representatives meet with the team to discuss a set of SARs that the bank has filed that quarter to determine why they should be interesting to law enforcement. It helps law enforcement to hear



from the bank analysts who developed the SAR case and why the analysts determined that the activity warranted a SAR. In turn, law enforcement conveys to the analysts their view of the usefulness of the information in the SAR and the strength of the case. This process helps the analysts to develop better SARs going forward.

Mr. Gibbons discussed the “tip line” the EDVA has begun using to obtain important SARs from local banks. EDVA has too many banks and SARs to either manually review all SARs or have individual banks present a set of SARs, so it has created an email tip line for banks with subjects in Eastern Virginia to send the BSA ID in the subject line to the SAR coordinator. The hope is that the SAR team can rely on the experience and intuition of bank officials to identify actionable SARs for further follow up by law enforcement. The email tip line is usavae.sars@usdoj.gov.

Mr. Gurdak discussed how the information obtained through subpoenas is used by law enforcement and requested that BSA compliance officers work with their subpoena compliance department to provide all of the back-up documentation for the SAR. The subpoena department may not be aware of all of the documentation that the BSA and fraud departments have so it is imperative for them to work together. He stressed how important it is to provide law enforcement with everything, and not just the minimal documentation.

The SAR team representatives provided attendees with a number of tips for how to make their SARs most useful:

- Include statements made by people involved in the suspicious activity. These statements can help show intent and prove cases beyond a reasonable doubt. It is also helpful to include titles for the people being discussed, such as “the local police chief” or “federal employee.”
- The best way to construct a SAR is to start with the BLUF (“Bottom Line Up Front”) to get the attention of the law enforcement representative reading the SAR. Additionally, make it “pop out” by providing the dollar amount if it is significant or explain why law enforcement should be interested in the SAR and not to assume law enforcement knows this information.
- If the case is already being investigated, include that information, particularly the agent’s name and law enforcement contact. This is helpful to deconflict.
- Be clear, concise, and specific in the narrative.
- Don’t be afraid to educate law enforcement. They may not understand the financial side or terminology that may be unique to a financial institution, so it’s important to educate them.
- Help to make a connection with a person at the bank filing the SAR by providing contact information.

Thank you to our speakers and sponsors: Anne Archer, Jacqueline Blaesi-Freed, John W. Borchert, Marcy Forman, Shea Gibbons, Ilissa M. Gould, William (Scott) Grob, Steve Gurdak, Lester Joseph, Barbara Keller, Steve Kemmerling, Lauren Kohr, Dennis Lormel, Joan (Cassie) Mathias, Frederick Reynolds, Sepideh Rowland, Dan Stipano, Peter Sullivan, and Darryl L. Tarver.