

Testimony Provided by Steve Gurdak

Senate Caucus on International Narcotics Control
“The Federal Response to Changing the Drug Overdose Epidemic”
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Chairman Whitehouse, Ranking Member Grassley, and other distinguished members of the Senate Caucus on International Narcotics Control, I am honored to appear before you to discuss my assessment of the emerging drug threats and money laundering techniques used by drug traffickers and money launderers, including how those threats and techniques have changed as a result of the COVID-19 pandemic.

My position as an initiative supervisor for the Washington/Baltimore High Intensity Drug Trafficking Area Program for 12 years has offered me the unique opportunity to meet, collaborate, consult, and associate with many of the top anti-money laundering (AML) experts in both the public and private sectors. A number of these experts have appeared before congressional caucuses and committees much like this one. Some even helped craft the Bank Secrecy Act (BSA), and its recent amendments through the Anti-Money Laundering Act of 2020 (AMLA2020).

Officially, I may only be able to speak for my W/B HIDTA initiative, known as the Northern Virginia Financial Initiative, or the NVFI. The NVFI; however, has created a network and reputation known far and wide for its innovations in anti-money laundering and narcotics trafficking investigations. It was created through consultation with many of those AML experts I mentioned with the goal of “testing the system” the BSA put in place. The logistics, innovation, and latitude the W/B HIDTA has provided in allowing the NVFI members to aggressively use and test the attributes of the BSA is probably why I’m here today. Additionally, we have benefitted from the incredible support of prosecutors at the U.S. Attorney’s Office for the Eastern District of Virginia (EDVA) in those endeavors.

The statistical and empirical data I am presenting is primarily derived from the *W/B HIDTA’s Threat Assessment for Program Year 2022*, and the rest of my testimony is based on knowledge acquired through my reaching out and sharing information with various experts, as part of my job and my passion.

I. The Drug Nexus.

Fentanyl is now the foremost drug threat the country faces. The *W/B HIDTA Threat Assessment* states that both its law enforcement initiative supervisors (61%) and treatment initiative leaders (75%) ranked it the number one drug threat. In my conversations with experts in the field, even that assessment is often described as being understated. Rather, they report that fentanyl is now a common “cutting agent” for nearly all the other dangerous drugs, even including marijuana. It is also now commonly used as part of growing counterfeit prescription pill market. Fentanyl is also ranked highest by all in the threat of violence associated with the distribution of it.

Despite the trend towards legalization and decriminalization, several of my law enforcement sources have expressed a concern about the increase in violence associated with marijuana trafficking. Further, 33 percent of the law enforcement officials surveyed for the *W/B HIDTA Threat Assessment* reported that marijuana was considered to be a major contributor to community problems. Although this might

initially seem surprising, it may be attributed to more dealers entering the market who no longer fear law enforcement, but are confronting more threats from increased competition.

The W/B HIDTA Threat Assessment reported that the availability of nearly all major illicit drugs seem to have remained constant, but prices did increase during COVID-19. It noted the emergence of the drugs Xylazine, a veterinary sedative for large animals, and Eutylone, a synthetic stimulant that is considered to be a “designer drug.” Eutylone started becoming widespread with the ban on the compound ethylene. Concerningly, yet not surprisingly, the *W/B HIDTA Threat Assessment* cited information that both of these emerging drugs are being mixed with fentanyl.

According to the *W/B HIDTA Threat Assessment*, Xylazine is commonly used with heroin and fentanyl, and its use increases the risk of overdose. It is also frequently found in combination with heroin and cocaine, which is referred to as a “speedball.” Though Narcan can save a person’s life who has overdosed on an opioid drug, when Xylazine is used as an adulterant in the opioid the person has taken, it does not respond to the naloxone to reverse its effects because it is not an opioid. There is no known antidote or reversal agent for Xylazine, and users may not even be aware that they are taking it.

On July 14, 2021, the U.S. Centers for Disease Control and Prevention released data showing that there was a 30 percent increase in overdose deaths from all types of drugs in 2020. Officials cited a number of COVID-19 restrictions that resulted in isolation as the reason for this increase.

During the COVID-19 pandemic, drug traffickers changed their distribution methods as a result of the restrictions put in place to contain it. Even before COVID-19 came into existence, drug dealers were using more socially-distanced text messages and holding more clandestine meetings. The emergence of rapid, inexpensive, worldwide shipping and mailing services had already opened international drug markets to nearly anyone with an internet connection. Dark web and foreign internet sources had been replacing many distribution methods, much like Amazon has changed our everyday shopping. The emergence of door-to-door delivery services for food delivery and other businesses also provided ideal cover for mores the localized delivery of drugs and other contraband.

From an enforcement perspective, the most common problem expressed during the COVID-19 restrictions was the ability to meet with prosecutors and the courts to obtain warrants and other legal process documents. Task forces and initiatives like mine that rely on multi-agency collaboration and cooperation also experienced difficulties during COVID-19, as the restrictions were causing confusion in assembling personnel for many enforcement actions.

Finally, the *W/B HIDTA Threat Assessment* found that drug trafficking organizations (DTOs) commonly distributed/dealt multiple types of drugs. This is similar to what I will note later in my testimony about money laundering organizations (MLOs), which is that MLOs launder funds for a variety of criminal activities.

II. The Money Talks

COVID-19 restrictions and their implications for money launderers created unique opportunities for investigators to re-define normal practices. A key principle in money laundering investigations has been to “define normal” and then to identify activities that are abnormal. Essentially that is what the Bank Secrecy Act (BSA) requires financial institutions to do when they file suspicious activity reports, or SARs. The changes, adjustments, and adaptations to the COVID-19 response required in the legitimate world

have the potential to expose and unmask illicit monies that were not similarly impacted during this time. By way of example, explaining how cash was still flowing in through closed doors created challenges for money launderers, yet it created new opportunities for investigators for better identifying them.

An emerging concern at the cartel or transnational MLO levels is the greater acceptance of cyber currencies, such as bitcoin. Our local SAR review team, the NVFI, is seeing more of a curiosity and experimental use of these cyber currencies. As many money launderers are both inexperienced and relatively unfamiliar in using or trading in these products, their cyber currency activities regularly result in creating easy to investigate money trails that we can disrupt with the use of existing money laundering and financial laws.

There is little doubt that the emergence and use of various peer-to-peer payment systems was accelerated by a need for non-contact financial transactions during the COVID-19 restrictions. We expected that illicit markets would find ways to take advantage of this trend. Just like with cyber currencies, MLOs are quite often inexperienced and unfamiliar with these emerging virtual payment systems. Their errors can readily expose their illicit activities to knowledgeable investigators.

While COVID-19 isolations provided an opportunity and time for investigators to analyze these systems, taking enforcement actions at times also exposed sources and methods. By way of example, cyber specialists described for me communications found on the dark web and other sites different methods that are used to test various systems abilities to avoid law enforcement detection.

One of the virtues touted with these virtual payment systems is the ability to include messages or comments with the transactions. These messages often blatantly included texts and emojis which clearly indicated that they were associated with illicit activities. These messages result in so many SARs that SAR review teams have a difficult time allocating investigative resources to address all of them. By way of example, the NVFI did not review any SARs filed on "Square" payment activities in March 2020. Now, however, we are reviewing over 100 SARS filed monthly since March of 2021. That is just for our isolated area of the Eastern District of VA.

III. Cash is Still King

While virtual and cyber currency seem to draw more attention and headlines, behind the scenes, currency is still king. From FinCEN reports, to the *Wall Street Journal*, and even a recent interview of the CEO of Brinks, all reflected that currency usage has actually increased amid the pandemic, despite the increased use of virtual banking.

FinCEN records reported a 44 percent increase in SAR filings from 2019-2020 for "Transactions Below the Cash Transaction Report (CTR) Threshold." This activity is more commonly known as "structuring" or "smurfing." A *Wall Street Journal* report attributed this increase to difficulties in smuggling bulk cash across closed borders and other international COVID travel restrictions. Notably, this type of information is a prime example of the emerging new indicators and intelligence being produced by the Bank Secrecy Act as a result of COVID-19 restrictions.

As a result of COVID-19 restrictions, many financial institutions made policy and procedure changes to better allow for more contactless banking. That included currency transaction levels. While contactless banking makes sense for virus avoidance, it also reduces risk for money launderers. The *W/B HIDTA*

Threat Assessment also reflected “cash structuring” as one of the primary money laundering methods in the Washington/Baltimore HIDTA region.

Earlier this year I consulted and debated with several associates about a December 3rd, 2020 *Reuters* story outlining a concerning emerging money laundering trend of Chinese brokers assisting with laundering money for Mexican drug organizations. However, when I dug deeper into this trend, I viewed it as a large portion of the money originating with multiple cash deposits into otherwise small, community based-businesses. There are opportunities for SAR review teams and other enforcement efforts to interdict or disrupt the currency flow at a grass roots or community level before it reaches the transnational money laundering organization or cartels. As such, one of the key takeaways when I provide training on SAR-based investigations I stress that “SARs don’t care about your jurisdiction or specialty.”

IV. Summary.

The Bank Secrecy Act, to include the partnership with financial institutions, is providing law enforcement with valuable information and intelligence to combat money laundering and related financial crimes. Properly done, “following the money” rarely fails as an investigative strategy. From that perspective, COVID-19 responses actually provide law enforcement with many new valuable investigative opportunities to better identify the legitimate from the illegitimate. The new normal is exposing money laundering and financial criminal activities. Our challenge is having enough trained investigators to discourage this activity by taking away the financial rewards recognized by successful MLOs.

Key points:

- Fentanyl is now the top drug threat. It is now a common “cutting agent” for nearly all the other dangerous drugs, including marijuana; and is commonly used as part of the growing counterfeit prescription pill market.
- Among law enforcement, there is a perceived increase in violence among marijuana traffickers. This may be attributed to more dealers entering the market who no longer fear law enforcement, but are confronting more threats from increased competition.
- During the COVID-19 pandemic, the availability of nearly all major drugs seem to have remained constant, but prices did increase. Two drugs, Xylazine and Eutylone, have emerged during 2020, and both have been mixed with fentanyl.
- The emergence of rapid, inexpensive, worldwide shipping and mailing services has already opened international drug markets to nearly anyone with an internet connection, and dark web and foreign internet sources have been replacing many traditional distribution methods.
- The use of currency usage has increased amid the pandemic, despite the increased use of virtual banking.
- There has been an almost 50 percent increase in the number of suspicious activity report (SAR) filings from 2019-2020 for “Transactions Below the Cash Transaction Report (CTR) Threshold.” This

activity is more commonly known as “structuring” or “smurfing.”

- COVID-19 responses actually provides law enforcement with new, valuable investigative opportunities to better identify legitimate and illegitimate financial transactions. The new normal is exposing money laundering and financial criminal activities. We just need more human resources with proper training to avail ourselves of this opportunity for our country.

I appreciate having this honor to present my testimony to the Caucus. I would be happy to answer any questions or respond to further inquiries from its Members.