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## The Art of Money Laundering

Hannah Purkey

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## NOTE

### THE ART OF MONEY LAUNDERING

*Hannah Purkey\**

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#### I. INTRODUCTION

As time evolves, so do criminals. The traditional ways to launder money are no longer as effective for organized crime groups<sup>1</sup> as they

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1. Terrorist organizations also launder money to conceal the origin of illicit funds. However, some terrorist groups acquire funding legally through donations and other financial contributions. *See generally* F.N. Baldwin, Art Theft: Perfecting the Art of Money Laundering (forthcoming Jan. 2009 for the 7th Annual Hawaii International Conference on Arts & Humanities) (draft paper at 22, on file with author). This Note will not focus on terrorist groups

once were. Although the traditional ways<sup>2</sup> are still commonly used, criminals have begun to look for new ways to cleanse money acquired from illegal activities. One such way is through the use of art. Although it sounds strange to think of drug traffickers and arms dealers purchasing famous Renoirs and Picassos, the use of art to launder money is not as strange as it seems. In fact, it is extremely effective.

Part II of this Note will focus on the dynamics of money laundering in general, and specifically, money laundering through the use of art. This Note will explain, briefly, the history and development of money laundering, and how the technique grew to be an effective means for organized criminals to cleanse their illicit money. A broad definition of money laundering will be provided, and then it will be explained how the use of art to launder money falls within the parameters of this definition.

Next, Part III will discuss why art is used to launder money. This section will analyze numerous elements which makes the use of art an effective means to launder money, including the mobility of art, the speculative price of art, and the complexity and difficulty faced by officials in correctly authenticating the price for a piece of art. Specific examples on the ease of laundering money through artwork will be provided. Further, this section will focus on how art is used to launder money if it is purchased from an auction house or alternatively, if the art is stolen, by those who intend to use it to launder money. Why organized criminals would want to purchase or steal the art will be discussed.

Part IV will focus on how organized criminals launder their money through the use of art. As a comparison, a brief explanation as to how organized criminals launder their money through more traditional methods will be provided. Then, it will be explained how art is used to launder money through a trade-based method. The dynamics and process of trade-based money laundering will be evaluated. Specifically, there are four techniques of trade-based money laundering that are utilized by organized criminals to launder money. Each of these four techniques will be examined.

Part V will present a comparison between money laundering through

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who launder money. For more information on terrorism and money laundering, see generally Symposium, Proceedings of the Third Annual Legal & Policy Issues in the Americas Conference, *Organized Crime, Terrorism, and Money Laundering in the Americas*, 15 FLA. J. INT'L L. 3 (2002). Rather, this Note will focus on organized criminals, such as the mafia and the other drug cartels, who launder their money to clean the illegal assets they obtained through such crimes as theft, killings, arms dealing, and drug trafficking. For more information regarding terrorist organizations that use art to launder money. See *id.* at 22 (discussing the looting and illegal trading of cultural property in Iraq).

2. Such as, the purchase of real estate or the moving of illicit bulk cash through financial institutions.

the real estate sector and the art sector. The real estate sector will be examined because it is more similar to the art industry than financial institutions are in the fact that both the real estate and art industries are considered non-financial institutions. Why organized criminals are now commonly using the art industry will be discussed. Specifically, a case example will be provided to demonstrate that while those in the real estate sector may be held criminally liable for laundering money, those in the art industry are not held to the same regulations. As a result, organized criminals are now seeking out the sector that is more likely to accept illicit money and more likely to fall under detection of authorities.

Part VI will focus on what regulations have been imposed upon auction houses. Then, why there are so few regulations imposed upon the art industry will be discussed. A case example will be provided which will demonstrate that those who launder money through art can be held criminally liable. However, the laundering of illicit money through the use of art can be accomplished with much more ease and without as much suspicion as other traditional ways to launder money. First, in the art industry those who sell art are not likely to be held criminally liable for money laundering, as real estate agents, bankers, and brokers have been. Second, the use of art as a means to launder money does not alert authorities to any suspicious activity. This is because authorities lack training on authenticating the price for a piece of art. Additionally, the mere speculative nature of the price for a piece of art makes these transactions appear legitimate.

Next, Part VII will focus on the domestic policies and the international agreements which have been implemented to combat money laundering and the sell of illicit art. However, the laws implemented to stop international money laundering and art theft are not effective to properly combat the vast amount of money controlled by organized criminals.

In conclusion, the question of what can be done to help fight money laundering through the use of art will be evaluated. Taking into consideration why organized criminals use art to launder money and how effective the use of art to launder money has become, this section will focus on the measures that should be implemented in order to combat the use of art to launder money. While no method will effectively prevent organized criminals from laundering the money acquired from illegal activities, regulations must be imposed upon the art industry in order to make it more difficult for organized criminals to use art to launder money. Unfortunately, once laundering money through art becomes more suspicious and difficult for organized criminals, they are sure to find another novel and effective way to cleanse their ill-gotten gains. The fight against the use of art to launder

money is merely a battle in a full fledged war.

## II. MONEY LAUNDERING: WHAT IT IS AND HOW IT IS ACCOMPLISHED?

The act of money laundering is nothing new. In fact, the practice of money laundering has been utilized for centuries, dating back more than 2,000 years ago when prosperous Chinese merchants engaged in money laundering to cleanse the profits of their illegal activities<sup>3</sup> after regional governments outlawed various forms of commercial trading.<sup>4</sup> However, the term “money laundering” was coined around the 1920s, shortly before the prohibition era in the United States, and this is when the techniques of money laundering were refined.<sup>5</sup> Jurisdictions and governmental organizations define money laundering differently,<sup>6</sup> but generally it means the “disguising or concealing of the illegal origin(s) of the proceeds of crime.”<sup>7</sup> Organized criminals are required to “clean” the “dirty” money acquired from illegal activities, because until the

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3. Two of the most common criminal activities, or “predicate crimes,” that require organized crime groups to cleanse the dirty money they acquire are drug trafficking and arms dealings:

Statistics from the United Nations and the U.S. Department of Justice confirms that the 1980s were indeed an era of unprecedented growth in the illicit drug trade. U.S. federal drug arrests doubled from 580,900 in 1980 to 1,361,700 in 1989. . . And the global trade in illicit drugs was estimated to be valued at \$120 billion dollars in 1985.

Syed Waqar Hasib, *Why the Global Anti-Money Laundering Regime is Ill-Equipped to Fight the War on Terrorism, and What to do about It*, May 2004, at 10, <http://repository01.lib.tufts.edu:8080/fedora/get/tufts:UA015.012.DO.00045/bdef:TuftsPDF/getPDF>. White collar crimes can also serve as predicate offenses for money laundering, including “embezzlement, fraud, and tax evasion.” Baldwin, *supra* note 1, at 15.

4. See Hasib, *supra* note 3, at 10.

5. Specifically:

[O]rganized criminals became heavily involved in the lucrative alcohol smuggling industry, and in order to conceal their illegal activity [they] began commingling their profits with profits from legitimate businesses. Laundromats were particularly attractive targets because they were cash heavy businesses with a high turnover of small bills and change.

*Id.* at 11.

6. For example, the U.S. Immigration and Customs Enforcement (ICE), an agency of the Department of Homeland Security, defines “money laundering” as the, “legitimization of proceeds from any illegal activity . . .” See U.S. Immigration and Customs Enforcement, <http://www.ice.gov/pi/financial/moneylaundering.htm> (last visited Sept. 30, 2009).

7. Baldwin, *supra* note 1, at 12-13.

money has been cleansed it is essentially worthless. Therefore, they engage in a three-step paradigm to convert their dirty money into legitimate assets.<sup>8</sup>

The first step in the process is the placement of the illegal funds, which focuses on distributing illicit bulk currency.<sup>9</sup> Next, is the layering of illegal funds, which focuses on moving illicit funds from various banks in various locations in an attempt to hide the chain between when the illicit funds entered the banking system until they eventually exit.<sup>10</sup> Finally, organized criminals strive for integration, which is the eventual return of these illicit funds into a legitimate economy.<sup>11</sup> Regardless of the illegal activity committed by organized criminals, which requires them to launder their proceeds, they generally all engage in this three-step paradigm to cleanse their ill-gotten gains.

Historically, money launderers have used various methods to cleanse their money. For example, organized criminals often use financial institutions to launder money. Financial institutions are the ideal markets to move large bulks of cash without attracting much suspicion. However, with the development of the Bank Secrecy Act of 1970, laundering money through financial institutions became more difficult. Regulations were imposed upon financial institutions which require them to file a Currency Transaction Report (CTR) with the Financial Crimes Enforcement Network (FinCEN), a bureau of the United States Treasury Department for “each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$ 10,000.”<sup>12</sup> Further, banks and other financial institutions are required

8. *Id.* at 13.

9. *Id.* This is the step where the dirty money will be deposited into a bank account or another financial institution in order to allow the funds to easily be tapped into the international financial system; see also Hasib, *supra* note 3, at 9.

10. Baldwin, *supra* note 1, at 12-13; see also Hasib, *supra* note 3, at 9.

11. Baldwin, *supra* note 1, at 12-13; see also Hasib, *supra* note 3, at 9-10.

12. The international requirement to file a CTR varies by country. For example, in America, financial institutions are required to file a CTR for a transaction over \$10,000; in Europe it is €15,000. Some nations do not require a CTR to be filed. For more information regarding requirements for financial institutions see IRS website, <http://www.irs.gov/businesses/small/article/0,,id=148857,00.html> (last visited Sept. 30, 2009). 31 C.F.R. 103.22(b) in part reads:

Filing obligations -- (1) Financial institutions other than casinos. Each financial institution other than a casino shall file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through, or to such financial institution which involves a transaction in currency of more than \$ 10,000, except as otherwise provided in this section. In the case of the Postal Service, the obligation contained in the preceding sentence shall not apply to payments or transfers made solely in connection with the

to file Suspicious Activity Reports (SARs) with FinCEN for “any suspicious transaction relevant to a possible violation of law or regulation. . .” including, “any suspicious transaction that it believes is relevant to the possible violation of any law or regulation . . .”<sup>13</sup> Although current banking regulations are attempting to control the use of banks and other financial institutions as vehicles to launder money, organized criminals have generally been able to stay one step in front of law enforcement’s efforts.<sup>14</sup>

Another method that organized criminals have historically used to launder money is through the purchase of real estate. Real estate serves as an effective way to launder money because it is a highly valued commodity. The exact price for a piece of property is relatively speculative.<sup>15</sup> The price depends upon how much a buyer is willing to pay, and cash transactions are usually permitted.<sup>16</sup> Organized criminals who purchase real estate to launder money purchase the property with dirty money then turn around and resell the property and acquire “clean” money from the transaction.<sup>17</sup> However, post-September 11, 2001 and the passage of the “Uniting and Strengthening America by

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purchase of postage or philatelic products . . .

18 C.F.R. 103.22(b) (2008).

13. 31 C.F.R. 103.18 in part reads:

(a) General. (1) Every bank shall file with the Treasury Department, to the extent and in the manner required by this section, a report of any suspicious transaction relevant to a possible violation of law or regulation. A bank may also file with the Treasury Department by using the Suspicious Activity Report specified in paragraph (b)(1) of this section . . .

(b) Filing procedures -- (1) What to file. A suspicious transaction shall be reported by completing a Suspicious Activity Report (“SAR”), and collecting and maintaining supporting documentation as required by paragraph (d) of this section . . .

(d) Retention of records. A bank shall maintain a copy of any SAR filed and the original or business record equivalent of any supporting documentation for a period of five years from the date of filing the SAR. Supporting documentation shall be identified, and maintained by the bank as such, and shall be deemed to have been filed with the SAR. A bank shall make all supporting documentation available to FinCEN and any appropriate law enforcement agencies or bank supervisory agencies upon request. 31 C.F.R. 103.18 (2008).

14. Despite all the regulations that have been implemented in an attempt to control money laundering, the United States remains the leading money laundering nation in the world. Fletcher Baldwin, *Money Laundering and Wire Transfers. When the New Regulations Take Effect Will They Help?*, 14 DICK. J. INT’L L. 413, 413 (1996).

15. Baldwin, *supra* note 1, at 4.

16. *Id.*

17. *Id.*

Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” (U.S.A. Patriot Act),<sup>18</sup> real estate agents are now required to report if they receive more than \$10,000 in cash for a real estate transaction.<sup>19</sup>

While these regulations, such as the Bank Secrecy Act and the U.S.A. Patriot Act, have not successfully combated organized criminals in their efforts to clean their dirty money,<sup>20</sup> it appears that it has made money launderers more aware that law enforcement is making a strenuous attempt to try to prevent them from laundering money through financial institutions and the real estate sector. Therefore, money launderers have begun to look for new, inventive ways to launder their money. Ways which are largely unregulated and would not attract much suspicion. One such way they have found to be effective is through the use of art.

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18. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (2001) [hereinafter U.S.A. Patriot Act]. For more information on Post-9/11 counterterrorism measures and the U.S.A. Patriot Act, see generally Symposium, Fourth Annual Legal & Policy Issues in the Americas Conference, *The Rule of Law, Terrorism, and Countermeasures Including the U.S. Patriot Act of 2001*, 16 FLA. J. INT’L L. 43 (2003).

19. *Id.* § 365, “Reports relating to Coins and Currency Received in Nonfinancial Trade or Business” reads in part:

(a) COIN AND CURRENCY RECEIPTS OF MORE THAN \$10,000.—

Any person—

(1) who is engaged in a trade or business; and

(2) who, in the course of such trade or business, receives more than \$10,000 in coins or currency in 1 transaction (or 2 or more related transactions), shall file a report described in subsection (b) with respect to such transaction (or related transactions) with the Financial Crimes Enforcement Network at such time and in such manner as the Secretary may, by regulation, prescribe.

(b) FORM AND MANNER OF REPORTS.—A report is described in this subsection if such report—

(1) is in such form as the Secretary may prescribe;

(2) contains—

(A) the name and address, and such other identification information as the Secretary may require, of the person from whom the coins or currency was received;

(B) the amount of coins or currency received;

(C) the date and nature of the transaction; and

(D) such other information, including the identification of the person filing the report, as the Secretary may prescribe . . .

*Id.*

20. According to 1996 statistics, between 590 billion and 1.5 trillion USD are laundered per year. See Financial Action Task Force, FATF-GAFI website, <http://www.fatf-gafi.org> (last visited Sept. 30, 2009) [hereinafter FATF-GAFI website].



### III. THE USE OF ART TO LAUNDER MONEY: WHY?

Art, similar to financial institutions or banks and real estate, provides an ideal means to launder illicit gains. Art is expensive, and at best, the price for a piece art is speculative.<sup>21</sup> The value of art is easy to increase.<sup>22</sup> Dealers set the price for a piece of art and this price can easily be increased or decreased, being set only by the amount a buyer is willing to pay.<sup>23</sup> Thus, a piece of art may be worth millions of dollars, but if organized criminals wanted to launder a high quantity of illicit funds through the artwork, the price allegedly paid could easily be forged to decrease the price so that no suspicion would be raised.<sup>24</sup>

Moreover, the complexity and the difficulty of accurately authenticating the price for a piece of art serves as an impediment to authorities' ability to determine whether the art is a means to launder dirty money.<sup>25</sup> A piece of artwork, certainly if it is considered a "masterpiece," may have a price tag in the hundreds of millions of dollars range.<sup>26</sup> Since art is such an expensive commodity, the value of the art does not make the purchase appear suspicious.<sup>27</sup> Therefore, it is easy for organized criminals to launder hundreds of millions of dollars through a "masterpiece," because authorities fail to question the amount paid for a single piece of artwork.<sup>28</sup>

The above assumes that organized criminals purchased the piece of art they intend to use as a means to launder dirty money.<sup>29</sup> However, much of the artwork used by criminal organizations to launder money is stolen.<sup>30</sup> The art market is a booming, multi-billion dollar industry.<sup>31</sup> It

21. See Baldwin, *supra* note 1, at 5.

22. *Id.*

23. Marianne James, Art Crime, Australian Institute of Criminology, Trends and Issues in Crime and Criminal Justice, No. 170, at 4, Oct. 2000, [www.aic.gov.au](http://www.aic.gov.au). (last visited Sept. 30, 2009) [hereinafter James].

24. Baldwin, *supra* note 1, at 5.

25. Megan K. Masher & Jon Michael Thompson, *Intellectual Property Crimes*, 39 AM. CRIM. L. REV. 763, 804 (2002).

26. Baldwin, *supra* note 1, at 5.

27. *Id.*

28. *Id.* at 5-6.

29. If criminals were to purchase the art with illicit money they would do so through large international auction houses. See *infra* Part V (discussing the use of auction houses to launder money).

30. In this circumstance, the organized criminal would steal the art and then sell it to another dealer or auction house. He may then turn around and purchase another piece of artwork to hide the illicit gains he obtained from the theft of the piece of artwork previously stolen. When he resells this second painting he has obtained clean money from the purchase. There also remains the option that after the theft the organized criminal would want to stay clear of the art industry, and therefore, he would take his illicit profits to another sector in order to cleanse the money.

is estimated that art theft is the “second most profitable illegal trade in the world,” only falling second to narcotics trafficking.<sup>32</sup> As a direct result, art theft has become a booming industry, too. Roughly \$2 billion to \$6 billion dollars worth of art is stolen or smuggled per year.<sup>33</sup> The theft of art is attractive to organized criminals because art is accessible,<sup>34</sup> mobile and can easily be stored.<sup>35</sup> Art thefts have become more frequent and higher in profile in recent years.<sup>36</sup> It has been reported that between 1970 and 1990, “Italy recorded 253,000 art thefts, and the thieves steal approximately 30,000 artworks from Italy every year.”<sup>37</sup> France comes in second only to Italy reporting to have roughly 6,000 culturally objects stolen per year.<sup>38</sup> Spain suffers from approximately 200 pieces of artwork stolen per year, and Britain suffers at least one billion dollars in losses per year due to art theft.<sup>39</sup>

Further, the laws pertaining to the importing and exporting of art vary widely from country to county, and “art is more difficult to trace once it is taken or sent out of the country from which it was stolen, and [criminals] know that the country of origin may not provide the safest market in which to sell the stolen art.”<sup>40</sup> Numerous countries regulate more leniently and will tolerate criminals reselling stolen pieces of art, including such countries as France, Germany, and Italy.<sup>41</sup> One of the most notorious European countries among art thieves and dealers is Switzerland.<sup>42</sup> This is in part due to the fact that “Switzerland has shown little, if any, inclination to crack down on illegal art traffic. Switzerland consistently refuses to participate in international discussions concerning the illicit art trade,” and “Switzerland’s generous tax structure favors foreigners.”<sup>43</sup> Moreover, Switzerland is favorable for illegal art traffic in part because monetary transactions

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31. Sarah S. Conley, *International Art Theft*, 13 WIS. INT’L L.J. 493 (1995).

32. *Id.*; see also Beverly M. Wolff, *Theft in the Museum: What Duty to Pursue? What Duty to Prosecute?*, C794 A.L.I.-A.B.A. 345, 347, Mar. 24, 1993.

33. *Id.*; see also James, *supra* note 23, at 1.

34. James, *supra* note 23, at 1.

35. Conley, *supra* note 31, at 494.

36. James, *supra* note 23, at 1. “The International Foundation for Art Research reported that the number of reports received regarding stolen art has tripled since the 1970s.” *Id.* at 1; see also Jennifer Sultan, Comment: Combating the Illicit Art Trade in the European Union: Europol’s Role in Recovering Stolen Artwork, 18 N.W. J. INT’L & BUS. 759-60 (1998) [hereinafter Sultan].

37. Sultan, *supra* note 36, at 760.

38. *Id.*

39. *Id.*

40. Conley, *supra* note 31, at 494-95.

41. These countries favor the bona fide purchaser over the original owner. *Id.* at 495.

42. *Id.*

43. *Id.*

conducted in the country are done so virtually in complete secrecy.<sup>44</sup> This provides a huge incentive for organized criminals to conduct illegal activities in the country in order to prevent detection.<sup>45</sup>

Churches, museums, dealers, and private collectors are all the victims of art theft.<sup>46</sup> The theft of art largely goes unreported to authorities, such as Interpol or even local law enforcement due to fear, embarrassment, and confusion.<sup>47</sup> Much of the reluctance or failure to report the theft of art stems from “poor record keeping and ignorance regarding the contents of the collection.”<sup>48</sup> However, even if art thefts were reported to the proper authorities, according to the International Foundation for Art Research, Interpol and the FBI’s ability to recovery stolen pieces of art is estimated to be as low as ten percent.<sup>49</sup>

Art theft does not only affect those who directly deal in art. Rather, the public also suffers tremendously from the theft of these pieces of cultural history, and there is little the public can do unless these thefts are reported by the proper entity.<sup>50</sup> The public also suffers from the theft of art because, “[a]rt is heritage. Art shapes society and defines human beings. Art is history.”<sup>51</sup> According to the preamble to the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, “[d]amage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”<sup>52</sup> Therefore, organized criminals who use art as a means to launder

44. *Id.*

45. *Id.*

46. Conley, *supra* note 31, at 498.

47. *Id.* For example, museums are reluctant to report the theft of pieces of art due to museums minimal security levels. Thus museums fear that if it is disclosed that a theft has occurred it will ultimately make them a more attractive target for further thefts, which will ultimately drive stolen works underground permanently. *Id.*; see also Solomon R. Guggenheim Found. v. Lubell, 77 N.Y.2d 311, 315-16 (N.Y. 1991). Moreover, the price for insurance has been increased due to the increase in the thefts of pieces of art, which in turn has caused many museums to “go bare,” or be uninsured. This solidifies museums desire to conceal art thefts because if they are uninsured, they do not want to broadcast the fact that they are a sitting target for future thefts. Conley, *supra* note 31, at 498.

48. Conley, *supra* note 31, at 498.

49. James, *supra* note 23, at 2 (noting that conviction rates for those who steal the art are estimated to be even lower than 10%).

50. *Id.*

51. Baldwin, *supra* note 1, at 3.

52. *Id.* at 3-4; see also UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter UNESCO Convention] (the Hague Convention was committed to the prevention of cultural property during times of warfare.). For a list of parties to the Hague Convention, see <http://www.icomos.org/hague/hague.rat.html> (last visited Sept. 30, 2009). The United States is not a party to the Hague Convention. *Id.*

money are not merely committing the predicate crime<sup>53</sup> *and* the crime of money laundering to cleanse their illegal profits acquired from the commission of the predicate crime. Rather, they are also committing a “crime against humanity by tainting artistic heritage.”<sup>54</sup>

The success of the illegal art market is also a product of the shroud of secrecy that surrounds the art world. Generally, art dealers are reluctant to reveal purchasers, suppliers or any other pertinent information regarding a transaction.<sup>55</sup> As a result, organized criminals are increasingly using the international art market as a means to launder their money. Certainly in light of the fact that dealers have no incentives or requirements to disclose the parties to the transaction, these transactions can be completed in cash, and the art purchased may be used as collateral to assist organized criminals to launder money.<sup>56</sup> Thus, the Mafia, East Asian gangsters and Latin drug traffickers are some of the most reputable customers and are now commonly known as big-time buyers in the art market.<sup>57</sup>

One of the unique aspects of the art industry, in comparison to financial institutions and the real estate sector, is that art transactions are largely unregulated.<sup>58</sup> There are few, if any, licensing requirements for art dealers.<sup>59</sup> Art dealers are not required to produce any specific type of qualifications, and they are not regulated under the same standards as financial institutions or real estate agents. Rather, art dealers are permitted to establish art galleries in any location they wish too, at any time that suits them, and stay in that location as long as they wish.<sup>60</sup> Art dealers, unlike financial institutions or real estate agents, appear to not be required to file CTRs.<sup>61</sup>

53. Which may in fact be the theft of cultural property. Baldwin, *supra* note 1, at 15.

54. *Id.* at 4.

55. Two of the largest international auction houses in the industry, Christie’s and Sotheby’s, were asked whether they “reveal[ed] the identity of the purchaser to the seller or any other governmental agency?” Christie’s Client Service representative responded that this information is not disclosed, unless the purchaser or seller authorized the auction house to reveal their identity. Telephone Interview with Christie’s Client Service Center (Jan. 16, 2009). Sotheby’s Client Representative stated that the identification of its purchasers and sellers are anonymous, except for purchases made by Sotheby’s catalogue. Telephone Interview with Client Representative at Sotheby’s (Jan. 16, 2009). There are no regulations which require that art dealers reveal the identity of these persons. Conley, *supra* note 31, at 496.

56. *Id.*

57. *Id.* at 496-97.

58. Sultan, *supra* note 36, at 804.

59. James, *supra* note 23, at 4.

60. *Id.*

61. Christie’s and Sotheby’s were asked whether they were, “required to file a CTR form 104 with FinCEN in accordance with section 365 of the U.S.A. Patriot Act if the transaction is over \$10,000?” Synae Whang, a Client Service representative for Christie’s answered, “In terms of filing reports, Christie’s does not file any reports or claims on purchases.” Email from Synae

As a result, those who are questioning whether these pieces of art are somehow connected to illegal activities are those who usually have no training or qualifications in the valuation of art. For example, customs officials are generally untrained and unqualified to determine the amount for which a piece of art would sell.<sup>62</sup> Therefore, “[t]he transfer of art into or out of the country could not raise the suspicions of customs staff, nor could they be expected to judge accurately the value of art leaving the country.”<sup>63</sup> Moreover, there are fewer restrictions on the export of goods as there are for imports. Thus, if an organized criminal desired to export a piece of art from a country, it is highly probable that they could easily do so. Then, they could attempt to import the art into a country that is more lenient on its import regulations, such as the United Kingdom, which has few restrictions on the import and export of pieces of art.<sup>64</sup> A piece of art could be “transferred overseas to an international market that is not concerned about the origins of funds used to purchase the art, but concerned with the quality of the art.”<sup>65</sup>

The following is an example of a narcotics trafficker who was able to use art to launder illicit money for a number of years because authorities were unaware that art is an increasingly used method to launder money. In this case,

[the] narcotics importer [was] believed to have laundered

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Whang, a Client Service representative for Christie’s to Hannah Purkey, International Financial Crimes Seminar student, University of Florida Levin College of Law (Jan. 13, 2009, 15:30:34 EST 2009) (on file with author). When speaking to the customer representative’s at Sotheby’s, the first representative I spoke with was not sure whether Sotheby’s filed CTRs with FinCEN. Therefore, this representative transferred the call to another representative in New York. However, this second representative was not sure either whether Sotheby’s filed CTRs. This second representative then transferred the call to the accounting department at Sotheby’s and upon asking the accounting representative whether the auction house filed CTRs she stated that she was not aware of such a requirement. Telephone Interview with Client Representatives at Sotheby’s, New York Office, Accounting Department (Jan. 16, 2009).

62. Financial Action Task Force-Groupe d’action financière [hereinafter FATF], Trade Based Money Laundering, at 28-29, <http://www.fatf-gafi.org/dataoecd/60/25/37038272.pdf> (last visited Sept. 30, 2009) (reporting that out of 24 Custom Agencies only 8 had training programs in place that deal with the subject of trade-based money laundering. However, 22 belied that better training and awareness of the techniques of trade-based money laundering were necessary).

63. James, *supra* note 23, at 4.

64. Kate Dourian, *Traffic in Stolen Artwork Faces Attack; Insurance: Police in Europe Fear that Theft Will Increase when Border Controls are Dropped Next Year*, L.A. TIMES, Nov. 24, 1991, at 30.

65. James, *supra* note 23, at 4. This may explain why countries such as France, Germany, and Italy will tolerate criminals reselling stolen pieces of art work. See also *supra* text accompanying note 41 (These countries are known for their art, and therefore, may be more concerned with acquiring quality than whether the art was acquired by legal means).

illicit proceeds through expensive artwork purchased in Australia and overseas. He allegedly began his art purchases with a \$60,000 painting, but over time began to purchase less obviously expensive art. Art was purchased with the expectation of a value increase and because it was unlikely to raise the suspicion of authorities in Australia. He became a recognized buyer overseas and dealers there would look for appropriate investments for him. Art bought overseas was allegedly paid for in cash.<sup>66</sup>

The use of art to launder money is attractive to organized criminals because, as demonstrated above, authorities are not properly trained to recognize the potential suspicion of art.<sup>67</sup>

Art has proven to be an extremely effective way to launder money because “there are virtually no controls in the industry.”<sup>68</sup> Essentially, this has allowed art to become a valuable way for any person wanting to launder money to do so successfully without raising virtually any suspicion of authorities. Organized criminals have come to realize the effectiveness in the use of art to launder money. Thus, resulting in the significant increase in overseas crimes related to art and cultural property, which is inextricably intertwined with major and organized crime.<sup>69</sup> In fact, “[g]roups as diverse as the American, Italian and Russian Mafia, the IRA and Colombian cocaine cartels,” have been suspected users of art to launder their dirty money acquired from drug and arms dealings.<sup>70</sup> With the use of art to launder money, organized criminals are yet again one step in front of law enforcement’s efforts to regulate and control their illegal activities.

Art serves as a perfect means to launder money because it is portable, expensive and unregulated. However, it is also the preferred method of many criminals because it is a more “sophisticated” than other traditional money-laundering techniques.<sup>71</sup> The use of art to launder money produces an “air of legitimacy.”<sup>72</sup> Therefore, it is increasing in popularity among mobsters and drug dealing organizations that use art to cleanse their ill-gotten gains from illegal activities.<sup>73</sup> In fact, “[d]ope dealers are buying a lot of art and artifacts because they

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66. James, *supra* note 23, at 4.

67. *Id.* Authorities were only made aware that the narcotics importer was using art to launder money after finding some of the receipts from the purchases. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. Conley, *supra* note 31, at 497.

72. *Id.*; see also Op-Ed, *Art for a Steal*, WASH. POST, Apr. 20, 1991, at A20 [hereinafter *Art for a Steal*].

73. Conley, *supra* note 31, at 497; see also *Art for a Steal*, *supra* note 72, at A20.

lend some respectability to their vocation: They go out to a business meeting, shoot somebody, come home and there's a Picasso on the wall -- it tends to legitimize them."<sup>74</sup>

#### IV. THE USE OF ART TO LAUNDER MONEY: HOW?

There are numerous ways money can be laundered. If an organized criminal wanted to use a traditional technique to launder money, such as through the use of financial institutions, he could do so by various complex methods. For example, he may want to utilize a common typology known as "smurfing."<sup>75</sup> These operations require illicit funds to be divided between numerous banks. The use of more than one bank is to ensure that suspicions are not raised by depositing one bulk sum into a single bank.<sup>76</sup> The funds could then be transferred between financial institutions, globally. The quicker and more frequent the money is transferred, the more improbable it becomes that the criminal will be caught, and the origins of the illicit money uncovered.<sup>77</sup> Other traditional typologies of money laundering include the use of off shore banking,<sup>78</sup> shell companies,<sup>79</sup> and investing money in legitimate business in order to hide the origins of the dirty money.<sup>80</sup>

Organized criminals have shifted from using financial institutions to non-financial institutions,<sup>81</sup> such as the real estate sector, in order to

74. Conley, *supra* note 31, at 497 (citing *Art for a Steal*, *supra* note 72, at A20).

75. See generally Michael Levi, *Money Laundering and Its Regulations*, 582 ANNALS 181 (2002) (discussing the process of "smurfing.").

76. If the bulk sum was over \$10,000, the bank would have to file a CTR, which would likely subsequently require them to file an SAR too. Thus, the organized criminal would want to keep the amount deposited well under \$10,000 to avoid these filings.

77. See generally Financial Action Task Force on Money Laundering, FATF, 1997-1998 Report on Money Laundering Typologies, 12 Feb. 1998, [http://www.fincen.gov/news\\_room/rp/files/typo97en.html](http://www.fincen.gov/news_room/rp/files/typo97en.html) (last visited Jan. 21, 2010).

78. With this typology of money laundering, organized criminals will send profits to various international banks that have bank secrecy laws, such as the Bahamas, the Cayman Islands, and Hong Kong. For more information on this topic, see generally Alan Lambert, *Caribbean Anti-Money Laundering Update*, 16 FLA. J. INT'L L. 89 (2004).

79. By utilizing this typology dirty money is invested into a fake business. The dirty money is used as payment for a good or services provided by the "business." However, these "businesses" do not provide any good or service. Rather, the entire purpose of the business is to establish the appearance of legitimacy. While it appears that a legitimate transaction has occurred the only function completed has been to launder illicit funds.

80. Here, dirty money is invested into a legitimate business to cleanse their dirty money. The money will be invested in large corporations, such as brokerage firms of casinos to ensure that the money is not detected. The invested funds will either be combined with the companies' clean money or the funds will be hidden in the companies' legitimate account.

81. Likely because financial institutions are more heavily regulated than non-financial institutions. Thus, money could be more easily laundered through non-financial institutions

launder dirty money.<sup>82</sup> A technique that is commonly used to launder money through the real estate sector is under- valuating property.<sup>83</sup> When money launderers under- value a piece of property they essentially “omit a part of the price from the purchase contract,” which results in the price listed as the contract of sale price being less than the price actually paid for the property.<sup>84</sup> The price listed on the contract of sale is the price that is paid for by means of the mortgage.<sup>85</sup> The portion that is not listed, the price actually paid, is the price that was paid for by the money launderer, in cash, to the seller under the table.<sup>86</sup> This technique effectively converts dirty money into legitimate assets when the property is subsequently sold at fair market price.<sup>87</sup>

Money launderers also over- value the price of property in order to acquire the largest mortgage possible.<sup>88</sup> In these circumstances, appraisers are manipulated or the money launderer establishes a series of purchases on the property.<sup>89</sup> It is more probable that money launderers will be successful in overvaluing the property in cases of “hotel complexes, leisure centers, golf courses, restaurants, unique buildings, etc.”<sup>90</sup> When applying for the mortgage, false documents are submitted, which demonstrates that the price of the property is more than it actually is in order to acquire greater financing.<sup>91</sup>

There are numerous other techniques that are used to launder money through the real estate sector, including mortgage schemes designed to transfer illegal funds into mortgage loans and interest payments.<sup>92</sup> Another is through the use of complex loans and credit financing, such as loan-back or back-to-back schemes.<sup>93</sup>

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without suspicion.

82. See FATF Report Highlights Money Laundering Trends, Feb. 6, 1997, [http://www.fincen.gov/news\\_room/nr/html/19970206.html](http://www.fincen.gov/news_room/nr/html/19970206.html) (last visited Jan. 21, 2010) [hereinafter M.L. Trends].

83. FATF, Money Laundering and Terrorist Financing Through the Real Estate Sector, 21-22, June 29, 2007, <http://www.fatf-gafi.org/dataoecd/45/31/40705101.pdf>.

84. *Id.* at 21.

85. *Id.*

86. *Id.* at 21-22. If the criminal organization or terrorist group is unable to find a seller willing to accept money under the table or is unable to influence the valuation of the property by the independent appraiser, it may still pay for part of the price set in the contract in cash from illegal activities, with a sum of money left over from not using the whole of the mortgage granted to it. *Id.* at 22.

87. *Id.*

88. *Id.* at 24.

89. *Id.*

90. *Id.*

91. *Id.*

92. See generally *id.* at 7-27 (discussing more specifically the typologies of money laundering through the real estate sector).

93. *Id.*



While organized criminals have shifted from financial to non-financial institutions to launder their money, they have also shifted within the non-financial institutions class, and are increasingly using the art industry to effectively cleanse their ill-gotten gains. As a non-financial institution lacking the regulations imposed upon the real estate sector, organized criminals have found that the use of the art industry to launder money is extremely effective. The laundering of money through art is trade based, by which is meant “the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origin.”<sup>94</sup> Organized criminals achieve trade based money laundering through “the misrepresentation of the price, quantity or quality of imports or exports.”<sup>95</sup> According to the Financial Action Task Force (FATF),<sup>96</sup> there are several basic techniques utilized by organized criminals in order to launder illicit money including, “over-and under-invoicing of goods and services; multiple invoicing of goods and services; over-and under-shipments of goods and services; and falsely described goods and services.”<sup>97</sup>

The first method, over- and under-invoicing of goods and services, requires “the misrepresentation of the price of the good or the service in order to transfer additional value between the importer and exporter.”<sup>98</sup> This technique is a useful means for organized criminals to launder money because the price of art is largely speculative.<sup>99</sup> Thus, money launderers can easily over- or under-invoice the price of art without raising the suspicions of customs agents who are not properly trained to determine the value for a particular piece of art.<sup>100</sup> As a result, “art, as a high-valued good with a limited market and highly speculative values present valuation difficulties for customs agencies in trying to decipher over-and under-valued goods.”<sup>101</sup> In the United States, exports are not regulated as heavily as imports, and art is duty free when imported into

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94. FATF, *supra* note 62, at 3.

95. *Id.*

96. See generally FATF-GAFI website, *supra* note 20 (explaining more in-depth information regarding the background of the organization, including that FATF is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a ‘policy-making body’ created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The FATF has published 40 + 9 Recommendations in order to meet this objective).

97. FATF, *supra* note 62, at 4. Further, FATF notes that not all these techniques are necessarily used in every country. *Id.*

98. *Id.* at 4.

99. See *supra* text accompanying notes 8-17.

100. Baldwin, *supra* note 1, at 17.

101. *Id.*

the country.<sup>102</sup> Thus, the use of art to launder money becomes even more attractive for organized criminals and even harder for U.S. Customs Agents to detect.

The second technique cited by the FATF as a means for organized criminals to launder money is by multiple invoicing of goods and services. This technique “involves issuing more than one invoice for the same international transaction.”<sup>103</sup> By utilizing this technique those laundering money do not misrepresent the price of the good as they do with over- and under-invoicing.<sup>104</sup> Rather, they merely “duplicate the price on the invoice.”<sup>105</sup> The FATF notes that the benefit of using this technique is that there are numerous “legitimate” reasons why an invoice may have been duplicated, such as “amendment of payment terms, corrections to previous payment instructions or the payment of late fees.”<sup>106</sup> Thus, if authorities did suspect money laundering, it would be easier for organized criminals to make the duplication appear like a mistake, rather than an effort to hide illicit money.

The third technique is over-and-under shipment of goods and services. With this technique those attempting to launder money may “overstate or understate the quantity of goods being shipped or services being provided.”<sup>107</sup> The FATF provides an extreme example of this technique to launder money where an organized criminal may partake in what has been termed “phantom shipping.” Here, the goods would not be shipped as intended. Rather, the criminal would “collude with an importer to ensure that all shipping and customs documents associated” with the shipping of goods would be processed as if the shipment was actually completed.<sup>108</sup>

The final technique of trade-based money laundering is falsely describing goods and services.<sup>109</sup> Where over-and-under shipment of goods or services misrepresents the quantity of the goods or services being shipped, this final technique misrepresents the quality or type of a good or service. The FATF provides the following example, “an

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102. See U.S. Customs and Border Protection website at Duty Free or Reduced Rates, [http://www.cbp.gov/xp/cgov/travel/vacation/kbyg/duty\\_free\\_reduced\\_rates.xml](http://www.cbp.gov/xp/cgov/travel/vacation/kbyg/duty_free_reduced_rates.xml) (last visited Jan. 21, 2010). According to the U.S. Customs and Border Protection, artwork (paintings) are considered “household effects,” and are essentially duty-free. Further, the FATF notes that for the same reason why exports are regulated less strictly as imports, duty-free goods “may also be subject to less rigorous scrutiny.” Trade Based Money Laundering, *supra* note 62, at 5; *supra* note 6.

103. FATF, *supra* note 62, at 5; see also Baldwin, *supra* note 1, at 18.

104. Baldwin, *supra* note 1, at 18.

105. *Id.*

106. FATF, *supra* note 62, at 5.

107. *Id.* at 6; see also Baldwin, *supra* note 1, at 18.

108. FATF, *supra* note 62, at 6.

109. *Id.* at 6; see also Baldwin, *supra* note 1, at 18

exporter may ship a relatively inexpensive good and falsely invoice it as a more expensive item or an entirely different item.”<sup>110</sup> As a result, what is reported to have been shipped on the customs document is not actually the quality or type of product that was actually shipped.<sup>111</sup> This final technique is valuable to those who use art to launder their money. Without customs agents effectively being able to value a piece of art, those laundering money may claim that the art is much less than it truly is in order to avoid suspicion.

Trade based money laundering is a successful way for organized criminals to cleanse their ill-gotten gains. Traditionally, organized criminals have utilized financial institutions and the physical movement of money in order to transfer large bulks of the illicit cash.<sup>112</sup> The fight against money laundering has predominately targeted these traditional methods. However, according to the FATF, “research has shown that when governments take action against certain methods of money laundering or terrorist financing, criminal activities tend to migrate to other methods.”<sup>113</sup> Thus, organized criminals who need to clean their dirty money are increasingly turning to non-financial institutions to do so. Specifically, they are increasingly using the art industry. The use of art through trade-based money laundering has not been a major target of aggressive policy actions and enforcement measures. This, coupled with the fact that first, the art industry is a booming, multi-billion dollar industry; second, customs agents are not qualified to question the declared price for art; third, the regulations on the import and exportation of art are not as strenuous as other goods; fourth, the theft of art is underreported to authorities; and fifth, once a piece of art is stolen it is unlikely that it will ever be recovered, certainly if leaves the country of origin’s borders<sup>114</sup> makes the use of trade-based money laundering through the use of art an effective way for organized criminals to cleanse their dirty money.

## V. CULPABILITY: REAL ESTATE AGENTS V. ART AUCTION HOUSES

A more traditionally used method to launder money is through the purchase of real estate. However, real estate is more strenuously

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110. FATF, *supra* note 62, at 6.

111. *Id.*

112. Baldwin, *supra* note 1, at 19.

113. The FATF goes on to explain that the migration to other techniques to launder money “reflects the fact that more aggressive policy actions and enforcement measures increase the risk of detection and therefore raise the economic cost of using these methods.” Trade Based Money Laundering, *supra* note 62, at 1.

114. Conley, *supra* note 31, at 494.

regulated than the art industry. The real estate sector is controlled by the U.S.A. Patriot Act, which requires real estate agents to report if they receive more than \$10,000 currency for a transaction (or two or more related transactions).<sup>115</sup> Interestingly, section 365 of the U.S.A. Patriot Act, which requires non-financial intuitions to report transactions over \$10,000, does not appear to apply as strenuously to art auction houses as it does bankers, real estate agents, or brokers even though the section requires “[a]ny person, who is engaged in the trade or business” to file such a report.<sup>116</sup>

The fact that the art industry is not vigorously regulated by the U.S.A. Patriot Act creates an effective way for organized criminals to launder their dirty money without the fear of detection by authorities. Moreover, the lack of regulations imposed also allows those in the art industry the opportunity to be willfully blind to the fact that the money purchasing these million to billion dollar pieces of artwork was acquired from illegal activities.<sup>117</sup> Since the art industry is basically self regulated, this allows auction houses to accept cash as a form of payment without fear of liability.<sup>118</sup> In the art industry, it appears that any money is good money. However, this is certainly not the case in the real estate industry. In fact, if real estate agents attempt to accept money that they reasonably suspect could be the proceeds from illegal activities, they can be held criminally liable.

This was the situation in *United States v. Campbell*,<sup>119</sup> where a realtor, Ellen Campbell, sold a home to a drug dealer, Mark Lawing.<sup>120</sup> Campbell met with Lawing approximately five times over a five week period and also had numerous phone conversations with him.<sup>121</sup> Lawing had represented to Campbell that he owned his own business, L & N Autocraft, which was purported to be an automobile customizing service.<sup>122</sup> Whenever Lawing met with Campbell he would travel by

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115. U.S.A. Patriot Act, *supra* note 18, § 365. Other industries that are required to file a CTR in accordance with the U.S.A. Patriot Act includes, casinos, car dealerships, banks, and bureaux de change. *See Levi, supra* note 75, at 187.

116. Baldwin, *supra* note 1, at 4-5.

117. The FATF notes that as organized criminals shift from using financial to non-bank financial institutions to launder money financial institutions are becoming more complicit with following anti-money laundering regulations. M.L. Trends, *supra* note 82. This suggests that those in financial institutions have less incentive to run the risk that they will be caught assisting in money laundering since all the big business is now going to less regulated non-financial institutions.

118. Baldwin, *supra* note 1, at 21.

119. *United States v. Campbell*, 977 F.2d 854 (4th Cir. 1992).

120. *Id.* at 855.

121. *Id.*

122. *Id.*

Porche.<sup>123</sup> When Campbell took Lawing to view potential homes he would often talk on his cellular phone, drink beer and eat.<sup>124</sup> On one viewing, Lawing carried a briefcase containing \$20,000, which he revealed to Campbell.<sup>125</sup>

Eventually, Lawing determined to purchase a home that was listed at \$191,000 but was negotiated down to \$182,500.<sup>126</sup> However, Lawing could not obtain a loan from the bank for the purchase price.<sup>127</sup> Therefore, Lawing negotiated a deal with the homeowners to accept a cash payment of \$60,000 under the table in exchange for the price of the house being dropped to \$122,500.<sup>128</sup> The owners accepted the offer and executed a new contract, dropping the listing price and increasing the commission percentage.<sup>129</sup> Lawing delivered the \$60,000 to the homeowners in wrapped small bundles concealed in a brown paper grocery bag.<sup>130</sup> At the end of the transaction, both Campbell and the homeowner's realtor, Sara Fox, were tipped a "couple hundred dollars" by Lawing.<sup>131</sup>

Subsequently, Ellen Campbell was indicted on three counts, including "1) money laundering, in violation of 18 U.S.C. § 1956 (a)(1)(B)(i); 2) engaging in a transaction in criminally derived property, in violation of 18 U.S.C. § 1957(a); and 3) causing a false statement (the HUD-1 form) to be filed with a government agency, in violation of 18 U.S.C. § 1001."<sup>132</sup> After a trial on the merits, Campbell was found

123. There were two Porsches. Lawing owned a red one and he also traveled in his associate's, Randy Sweatt's, gold one. *Id.*

124. *Id.*

125. *Id.*

126. *Id.* at 855-56.

127. *Id.* at 856.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* (internal citations omitted). 18 U.S.C. § 1956, is also known as the "Money Laundering Act of 1986." The Act was implemented in order to fight organized crime and "focused upon the prevention of illicit drug money from entering the financial markets especially the banking system of the nation." Baldwin, *supra* note 1, at 2. 18 U.S.C. § 1956(a)(1) reads in part:

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity. (2008).

18 U.S.C. § 1957(a) reads:

guilty on all three counts.<sup>133</sup> On appeal, her motion for judgment of acquittal was granted in respect to counts one and two.<sup>134</sup> The government appealed.<sup>135</sup>

In determining whether Campbell violated the money laundering statute the appellate court reviewed, “whether there was sufficient evidence for the jury to find that Campbell possessed the knowledge that: (1) Lawing’s funds were the proceeds of illegal activity, and (2) the transaction was designed to disguise the nature of those proceeds.<sup>136</sup> The court noted that when determining Campbell’s culpability, generally she would have to possess “subjective” knowledge that the money used by Lawing was the proceeds of illegal activities.<sup>137</sup> However, here the jury was given a willful blindness instruction, which only required “the Government [to] prove beyond a reasonable doubt that the defendant purposely and deliberately contrived to avoid learning all of the facts.”<sup>138</sup>

(a) Whoever, in any of the circumstances set forth in subsection (d), knowingly engages or attempts to engage in a monetary transaction in criminally derived property that is of a value greater than \$ 10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b). (2008).

The HUD-1 form is a form used by a settlement or closing agent itemizing all charges imposed on a borrower and seller in a real estate transaction. This form gives a picture of the closing transaction, and provides each party with a complete list of incoming and outgoing funds. Investopedia.com, <http://www.investopedia.com/terms/h/hud-1.asp> (last visited Jan. 28, 2010). 18 U.S.C. § 1001 reads in part:

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--  
 (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;  
 (2) makes any materially false, fictitious, or fraudulent statement or representation; or  
 (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;  
 shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism . . . imprisoned not more than 8 years, or both . . . (2008).

133. *Campbell*, 977 F.2d at 856.

134. Her “motion of acquittal was granted in respect to the money laundering (18 U.S.C. § 1956) and transaction in criminally derived property counts (18 U.S.C. § 1957).” *Id.*

135. *Id.*

136. *Id.* at 857.

137. *Id.*

138. *Id.* The entire willful blindness instruction is as follows:

The circuit court ultimately held, “the evidence of Lawing’s lifestyle, the testimony concerning Campbell’s statement that the money ‘might have been drug money,’ and the fraudulent nature of the transaction in which Campbell was asked to participate” were sufficient to create a question for the jury concerning whether Campbell “‘deliberately closed her eyes to what would otherwise have been obvious to her.’”<sup>139</sup> Thus, the court concluded “a reasonable jury could have found that Campbell was willfully blind to the fact that Lawing was a drug dealer,” and further that Lawing’s purchase of the property was intended, at least in part, as an effort to conceal the proceeds he obtained from dealing drugs.<sup>140</sup>

As for the second count, it applied the same analysis as it did with the money laundering count. The circuit court concluded that a jury could reasonably find that Campbell knew of, or was willfully blind to, “Lawing’s true occupation,” and she nevertheless engaged in a transaction with him knowing that the money used was derived from illegal activities and was a value greater than \$10,000.<sup>141</sup>

Ultimately, the circuit court concluded that Campbell was guilty of money laundering because of the “obvious” character traits of Lawing, including the fact that “Lawing and his companion both drove new Porches, and that Lawing carried a cellular phone, flashed vast amounts of cash, and was able to be away from his purportedly legitimate business for long stretches of time during normal working hours.”<sup>142</sup>

The element of knowledge may be satisfied by inferences drawn from proof that a defendant deliberately closed her eyes to what would otherwise have been obvious to her. A finding beyond a reasonable doubt of a conscious purpose to avoid enlightenment would permit an inference of knowledge. Stated another way, a defendant’s knowledge of a fact may be inferred upon willful blindness to the existence of a fact.

It is entirely up to you as to whether you find any deliberate closing of the eyes and inferences to be drawn from any evidence. A showing of negligence is not sufficient to support a finding of willfulness or knowledge. I caution you that the willful blindness charge does not authorize you to find that the defendant acted knowingly because she should have known what was occurring when the property at 763 Sundown Road was being sold, or that in the exercise of hindsight she should have known what was occurring or because she was negligent in failing to recognize what was occurring or even because she was reckless or foolish in failing to recognize what was occurring.

*Id.*

139. *Id.* at 859.

140. *Id.*

141. *Id.* at 859-60.

142. *Id.* at 859.

Moreover, Campbell's failure to report the \$60,000 under-the-table transaction was sufficient proof to the circuit court that a reasonable juror could have concluded beyond a reasonable doubt that Lawing was attempting to conceal his illicit money from authorities.

*United States v. Campbell* exemplifies the consequences imposed upon those who are subjected to regulation. Real estate agents may be held criminally liable for money laundering, even if they do not subjectively know that the funds used to purchase a piece of property are from illegal activities, or that their client is attempting to hide illicit funds by means of purchasing the property. If the agent should have known, then this is sufficient to hold him liable for money laundering.<sup>143</sup> However, these restrictions imposed upon the real estate sector do not apply to the art industry. For example, two of the largest auction houses in the world, *Sotheby's* and *Christie's* allow purchasers to pay cash for a piece of art, and (seemingly) are not required to file a CTR if the transaction is more than \$10,000.<sup>144</sup> Without being regulated by the U.S.A. Patriot Act, organized criminals could easily cleanse millions of dollars in illicit money through the purchase of a single piece of art at one of these international auction houses.

Further, without auctioneers being held criminally liable for willful blindness, as real estate agents are, criminals are even more likely to seek out the art industry as an effective means to clean their dirty money. Additionally, auctioneers are more likely to accept funds, regardless of their origin, if they cannot be held criminally liable. An auction house's acceptance of illicit funds becomes even more a reality in light of the fact that there is "fierce competition between the large international auction houses . . ." <sup>145</sup> As a result, auction houses often engage in illegal activities in order to obtain an advantage over their competitors.<sup>146</sup>

Without strenuous regulations governing the art industry, competition will likely cause these auction houses to persistently violate criminal and civil laws to maintain a competitive edge. Auction houses

143. See *United States v. Massac*, 867 F.2d 174, 177-78 (3d Cir. 1989) (knowledge that funds were drug-related, coupled with irregular nature of financial transactions, sufficient to permit jury to infer defendant's knowledge of the concealing purpose of such transactions); see also *United States v. Isabel*, 945 F.2d 1193, 1202-03 (1st Cir. 1991).

144. See *Sotheby's*, <http://www.sothebys.com/help/buy/index.html> (last visited Jan. 28, 2010) (discussing accepted payment methods; note that *Sotheby's* allows for cash, subject to certain restrictions and legal limits, but fails to define those limitations). See also *Christie's*, <http://www.christies.com/features/guides/buying/pay-ship.aspx> (last visited Sept. 30, 2009) (discussing accepted payment methods; note that *Christie's* does not mention any limitations on the payment of art with cash).

145. Brenna Adler, *The International Art Auction Industry: Has Competition Tarnished its Finish?*, 23 N.W. J. INT'L L. & BUS. 433, 434 (2003).

146. *Id.*



will continue to be an ideal and effective way for organized criminals to launder large quantities of dirty money, because the competition for the purchase of artwork at auction will drive up the price.<sup>147</sup> Thus, this will make it even easier to launder even more illicit money.

While requiring the real estate sector to file reports for cash transactions over \$10,000 has not completely eliminated organized criminals' attempts to launder money through the purchasing of property, it has at least hindered the process. Moreover, financial institutions and banks have increasingly filed SARs for suspicious activity in regards to residential real estate transactions.<sup>148</sup> According to FinCEN, between January 1, 1996 and December 31, 2006, 195,253 SARs were filed by banks or other financial institutions.<sup>149</sup> Upon these filed SARs, 1,095 were randomly selected for review.<sup>150</sup> Out of these randomly selected SARs, 747 of these were filed regarding "real estate-related transactions or involved persons, professions or businesses in that sector."<sup>151</sup> From these 747 filings, "151 (20.21%) described suspected structuring and/or money laundering . . ."<sup>152</sup> This trend demonstrates that although the reporting process will not completely eliminate the problem, it is at least minimally effective in combating the use of real estate to launder money. It is certainly more effective than not requiring any reporting at all.

## VI. HOW ARE AUCTION HOUSES REGULATED?

Auction houses are regulated via agency law.<sup>153</sup> As agents, auction houses have "a fiduciary duty to act in the utmost good faith and in the interest of"<sup>154</sup> their clients, or principals.<sup>155</sup> If the auction house

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147. Baldwin, *supra* note 1, at 21-22.

148. Financial Crimes Enforcement Network, Regulatory Policy and Program Division, Suspected Money Laundering in the Residential Real Estate Industry: An Assessment Based Upon Suspicious Activity Report Filings Analysis, Apr. 2008, at 4, [http://www.fincen.gov/news\\_room/rp/files/MLR\\_Real\\_Estate\\_Industry\\_SAR\\_web.pdf](http://www.fincen.gov/news_room/rp/files/MLR_Real_Estate_Industry_SAR_web.pdf) (last visited Jan. 28, 2010) [hereinafter Real Estate and SAR] (reporting the numbers of relevant SAR filings increased significantly after 2002 with the steepest increase reported in 2004-2005); *see also* Financial Crimes Enforcement Network, Regulatory Policy and Program Division, Money Laundering in the Commercial Real Estate Industry: An Assessment Based Upon Suspicious Activity Report Filing Analysis, Dec. 2006, [http://www.fincen.gov/news\\_room/rp/reports/html/CREassessment.html](http://www.fincen.gov/news_room/rp/reports/html/CREassessment.html) (last visited Jan. 29, 2010) (describing the number of SARs filed by banks or financial institutions regarding commercial real estate between January 1, 1996 and August 31, 2006).

149. Real Estate and SAR, *supra* note 148, at 5.

150. *Id.*

151. *Id.*

152. *Id.*

153. Adler, *supra* note 145, at 434.

154. *Id.* at 435. One can make the argument that an auctioneer is working in his principal's

breaches its duty, then it may be “liable for damages caused to the principal, whether the cause of action is based on contract . . . or on negligence . . .”<sup>156</sup>

The requirements of auctioneers vary from country to country.<sup>157</sup> For example, “[i]n New York, the auctioneer is required to have a license, and is wholly responsible for maintaining proper conduct throughout the auction.”<sup>158</sup> The Netherlands’ requirements differ from those imposed in the United States by “provid[ing] a type of intermediary between the auctioneer and the seller and the public,” which results in the state having “a tighter stronghold on the auctioneering practice.”<sup>159</sup> Those who wish to launder money through auction houses use auction houses similar to those in the United States, since these auction houses, unlike the ones in the Netherlands, are not operated by the state.<sup>160</sup> Money launderers will seek out large internationally based auction houses to launder money, because these auction houses operate in countries that are not controlled tightly by the state.<sup>161</sup>

In the United States, the auction itself is governed by the Uniform Commercial Code (UCC), but there are no limits apparent in the UCC which restrict the use of cash as a form of payment.<sup>162</sup> Rather, the forms of payment accepted are established by the auction houses themselves, and as previously mentioned, two of the largest international auction houses, *Sotheby’s* and *Christie’s*, accept cash as a proper form of payment.<sup>163</sup>

If these large auction houses are not obligated to follow any requirements beyond those imposed by agency or contract law then there are no incentives for auctioneers to prohibit money laundering. In fact, without proper regulations, auction houses are likely to do the

best interest if his principal is using dirty money to purchase artwork and the auctioneer fails to report this illicit activity to the authorities.

155. See *Cristallina S.A. v. Christie, Manson & Woods Int’l, Inc.*, 117 A.D.2d 284, 292 (N.Y. App. Div. 1st Dep’t 1986) (holding that as an agent, an auction house has a fiduciary duty to act in the utmost good faith and in the interest of a consignor, its principal, throughout their relationship).

156. *Id.*

157. Adler, *supra* note 145, at 436.

158. *Id.*

159. *Id.*

160. See *id.* at 437.

161. *Id.* (noting since France’s auctions has transitioned to a private enterprise because state agents are no longer required to run public auctions, international auction houses, such as *Sotheby’s* and *Christie’s*, will begin to do business in France).

162. Baldwin, *supra* note 1, at 20-21; see also Uniform Commercial Code (UCC), § 2-328.

163. Baldwin, *supra* note 1, at 21; see also *Sotheby’s*, <http://www.sothebys.com/app/live/office/OfficeLanding.jsp> (last visited Jan. 28, 2010) (discussing locations where *Sotheby’s* conducts auctions); see also *Christie’s*, <http://www.christies.com/about/locations/> (last visited Jan. 28, 2010) (discussing locations where *Christie’s* conducts auctions).

exact opposite. These auction houses can accept payments that they know, or should know, are the proceeds of illegal activities, while properly maintaining their fiduciary duty by acting in the utmost good faith and interest of their organized criminal clients, and still being able to maintain a competitive edge in the cutthroat art industry.

## VII. DOMESTIC AND INTERNATIONAL EFFORTS TO COMBAT MONEY LAUNDERING

The regulations imposed on the art industry are obviously inadequate. However, a person who uses art to launder money may still be held criminally liable under 18 U.S.C. § 1956. For example, in *United States v. Crabtree*,<sup>164</sup> F. Dale Crabtree caused Christie's to issue checks from the proceeds of a sale of a Renoir painting in his children's names.<sup>165</sup> Crabtree then gave these checks to his business associate, who then deposited the money into various bank accounts, which he was issued power of attorney over to pay for Crabtree's expenses.<sup>166</sup> The court upheld Crabtree's conviction for violating of 18 U.S.C. § 1956(a)(1)(B)(i)<sup>167</sup> finding that "the transfer of \$50,000 of the \$100,000 Renoir proceeds [were] to conceal the funds [of Crabtree's] bankrupt estate," and Crabtree had knowledge that the transaction involved proceeds from the illegal activity.<sup>168</sup>

While *United States v. Crabtree* demonstrates that those who use the proceeds of artwork to launder money may be held criminally liable, there still appears to be a lack of regulations to control auction houses.<sup>169</sup> Crabtree sold his Renoir to Christie's and the checks were issued in his children's names. Yet, without there being proper

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164. *United States v. Crabtree*, 1993 U.S. App. LEXIS 22927 (10th Cir. Ok. Sept. 3, 1993).

165. *Id.* at \*11-12.

166. *Id.*

167. *See* 18 U.S.C.A. § 1956 (a)(1)(B)(i).

168. *Crabtree*, 1993 U.S. App. LEXIS 22927 at \*10.

169. Other examples of those who have attempted to use art to launder money includes, two New York art dealers who were charged with conspiring to launder \$4.1 million dollars in drug money through selling what they claimed to be original paintings by Modigliani and Degas. It was reported that the sellers were willing to accept payment in drug money or from organized criminals. *Money Laundering Charges for Art Dealers*, N.Y. TIMES, June 2, 2001, at B6; Metropolitan Desk; Twenty to thirty million dollars worth of art was seized from a bankrupt Brazilian banker who allegedly bought the art with dirty money. Moreover, the banker was the last known person in possession of a famous Jean-Michael Basquiat painting, "Hannibal," which was valued at approximately \$8 million. The painting was smuggled out of Brazil and arrived at Kennedy airport in New York after passing through London, where the painting was only valued at \$100 on a customs declaration form. Lawrence Van Gelder, *Missing Basquiat Painting Found*, N.Y. TIMES, Feb. 16, 2008, at E2.

restrictions upon the auction houses they can continue to be willfully blind to the fact that art purchased and sold is being used to launder money.

Unfortunately, the issue of money laundering is not contained merely within the art industry. Rather, the traditional techniques remain a constant hindrance in the battle against money laundering.<sup>170</sup> Even with the enactment of numerous regulations to control money laundering, the United States continues to remain “the leading money laundering nation in the world.”<sup>171</sup> The United States has attempted to combat money laundering through the enactment of such domestic measures as the Bank Secrecy Act, the Money Laundering Act, and the U.S.A. Patriot Act. Other countries, such as France and the United Kingdom, also began to implement laws to stop money laundering.<sup>172</sup> While it is vital for each nation to implement domestic anti-money laundering statutes, money laundering is largely an international crime.<sup>173</sup> The world is not as large as it once was, and financial systems and trade markets spanning the globe are now connected. Globalization has made it easier for organized criminals to launder money from country to country with a simple click of a button. Since money laundering is largely an international crime it needed to be addressed through international action. Therefore, a multilateral agreement was implemented to combat money laundering on the international front.

The *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988* (U.N. Convention), is an international agreement that was implemented in an attempt to prevent drug trafficking, and as an indirect effect, to prevent money laundering.<sup>174</sup> The U.N. Convention intends “to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension.”<sup>175</sup> The U.N. Convention required Parties to enact domestic measures to combat illicit drug trading.<sup>176</sup> Member’s domestic laws serve as the foundation for the U.N. Convention’s ability to address drug-trafficking and money laundering

170. See *supra* text accompanying notes 3 & 20.

171. Baldwin, *supra* note 1, at 28.

172. Hasib, *supra* note 3, at 18; see also U.N. International Money Laundering Information (IMoLIN), at <http://www.imolin.org> (last visited Sept. 30, 2009) (discussing the countries which have implemented anti-money laundering laws).

173. Hasib, *supra* note 3, at 18.

174. *Id.*; see also U.N. Office on Drug and Crime (UNODC), U.N. Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, [http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf) (last visited Sept. 30, 2009) [hereinafter U.N. Convention].

175. U.N. Convention, *supra* note 174, art. 2.

176. *Id.*

on the international front.<sup>177</sup> However, Article 3 of the U.N. Convention prescribes the minimum level of measures which were required to be adopted.<sup>178</sup> These measures would establish criminal offenses for crimes committed internationally, in accordance with each member's domestic penal codes.

The U.N. Convention does not specifically state that it is intended to fight against "money laundering." However, the preamble to the U.N. Convention does concede that the drafters were, "[a]ware that illicit traffic generates large financial profits and wealth enabling transnational criminal organizations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial business, and society at all its levels."<sup>179</sup> Moreover, Article 3(b) of the U.N. Convention requires parties to make the following actions illegal in accordance with their domestic laws:

(i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph *a)* of this paragraph, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences established in accordance with subparagraph *a)* of this paragraph or from an act of participation in such an offence or offences.<sup>180</sup>

While the U.N. Convention essentially requires parties to establish money laundering as a criminal offense in accordance with domestic laws, it never explicitly proscribes "money laundering."<sup>181</sup>

Also, the U.N. Convention only finds that one is culpable for money laundering if they "convert, transfer, or conceal property and only if one

177. Hasib, *supra* note 3, at 18

178. U.N. Convention, *supra* note 174, art. 2

179. *Id.* pmb1.

180. *Id.* art. 3(b)(i)-(ii).

181. See Hasib, *supra* note 3, at 20 (stating, "the drafters deliberately omitted mentioning the actual phrase "money laundering." This was because they felt the term was relatively novel and posed difficult translation problems . . . although the act of money laundering existed for centuries, it became a significant issue for lawmakers only in the 1980s, as a direct response to the growth in illicit drug trafficking."). See also Commentary on the United Nations Convention Against Illicit Traffic in Narcotics and Psychotropic Substances, 50 INT'L & COMP. L.Q. 466 (2001).

knows that the property is derived from an offense described in subsection (a).<sup>182</sup> Ultimately, this may present a conflict between international and domestic law, because a nation's domestic laws may include many more predicate crimes than those enumerated in art 3(a) of the U.N. Convention.<sup>183</sup> As a result, organized criminals who launder money to hide illicit gains through the production, sale, or brokerage of narcotics may be held liable under the U.N. Convention. However, if an organized criminal were to purchase a piece of art with cash from an international auction house with illicit funds acquired from arms dealing in order to hide the origin of the dirty money, the criminal would not be "laundering money" in accordance with the U.N. Convention, because arms dealing is not a predicate crime enumerated in art. 3(a). The U.N. Convention may be an effective measure to combat international money laundering pertaining to selling, purchasing, or production of drugs, but it is ineffective to combat against organized criminals who engage in money laundering to cleanse their dirty money acquired from other predicate crimes.

While the U.N. Convention attempts to control international money laundering, other multilateral agreements have been implemented in an

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182. Hasib, *supra* note 3, 20.

183. U.N. Convention, *supra* note 174, art. 3(1)(a)(i)-(v) reads:

1. Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally:

- (a) (i) The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention;
- (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended;
- iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in i) above;
- iv) The manufacture, transport or distribution of equipment, materials or of substances listed in Table I and Table II, knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;
- v) The organization, management or financing of any of the offences enumerated in i), ii), iii) or iv) above . . . ;

*See also* Baldwin, *supra* note 1, n.20 (commenting the United States has over 200 predicate crimes); *see also id.* at 27-28 (commenting on the difficulty to implement effective international anti-money regimes due to the various laws imposed by so many different nations).

attempt to combat the illicit trade of art.<sup>184</sup> First, the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property* (UNESCO Convention),<sup>185</sup> was implemented by the U.N. Educational, Scientific and Cultural Organization (UNESCO) in 1970.<sup>186</sup> The UNESCO Convention was established in an attempt to prevent the trade of criminally obtained cultural property by restricting the trade of such property “through export licenses and a system of administrative controls that allows Member States<sup>187</sup> to prevent the illegal export and import of ‘cultural property’ and to request the return of such property.”<sup>188</sup> In accordance with the UNESCO Convention, art. 7(b)(ii),

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184. Sultan, *supra* note 36, at 771.

185. UNESCO Convention, *supra* note 52.

186. Sultan, *supra* note 36, at 772.

187. See Convention on the Means of Prohibiting and Preventing the Illicit, Import, Export, and Transfer of Ownership of Cultural Property. Paris, Nov. 14, 1970, <http://portal.unesco.org/la/convention.asp?KO=13039&language=E&order=alpha> (last visited Sept. 30, 2009) (discussing Member States to the UNESCO Convention).

188. Sultan, *supra* note 36, at 772-74; see also UNESCO Convention, *supra* note 52, arts. 6, 7, 10(a).

Article 6 reads:

The States Parties to this Convention undertake:

- (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;
- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;
- (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

UNESCO Convention, *supra* note 52, art. 6. Article 7 reads:

The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
- (b)
  - (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

Member States must return cultural property that is illicitly removed from other Member State's territory if requested, so long as the removal was properly documented and the requesting party is willing to "pay just compensation to an innocent purchaser or to a person who has valid title."<sup>189</sup>

Another international convention implemented to battle against illicit art trading is the *UNIDRIOT Convention on the International Return of Stolen or Illegally Exported Cultural Objects* (UNIDRIOT Convention).<sup>190</sup> According to the preamble of the UNIDRIOT Convention, it was established due to the

[D]eep concern [of] the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of

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(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

UNESCO Convention, *supra* note 52, art. 7. Article 10 reads:

The States Parties to this Convention undertake:

- (a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;
- (b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

UNESCO Conventions, *supra* note 52, art. 10.

189. UNESCO Convention, *supra* note 52, art. 7; see also Sultan, *supra* note 36, at 775.

190. UNIDRIOT Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995, <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm> (last visited Sept. 30, 2009) [hereinafter UNIDRIOT Convention].



national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information.<sup>191</sup>

Essentially, the UNIDRIOT Convention was implemented to combat against the trading of cultural objects illegally exported from a country.<sup>192</sup> The UNIDRIOT Convention calls for Member States to establish common legal rules, which prescribe for the restitution and return of cultural objects that have been illegally been removed from the nation in order to “improve[e] the preservation and protection of the cultural heritage in the interest of all.”<sup>193</sup> Under the UNIDRIOT Convention, if a party acquires an illicit piece of cultural property they are required to return the art to the country of origin, even if they acquired the art in good faith.<sup>194</sup> Much like the UNESCO Convention, in accordance with the UNIDRIOT Convention, those who possess the illicit cultural property are entitled to “fair and reasonable compensation” upon returning the art, “so long as the possessor can prove that it acquired the object through the exercise of ‘due diligence.’”<sup>195</sup>

While measures have been implemented to combat art thefts, these multilateral agreements are not effective enough to prevent the use of

191. *Id.* pmb1.

192. *Id.*

193. *Id.*

194. *Id.* art. 3(1)-(2). Article 3 reads:

(1) The possessor of a cultural object which has been stolen shall return it.

(2) For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.

*Id.*

195. Sultan, *supra* note 36, at 791; see also UNIDRIOT Convention, *supra* note 190, art. 4(1). Article 4(1) reads:

The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

*Id.*

art to launder money. In fact, these measures are not even enough to combat the theft of art.<sup>196</sup> The theft of a piece of art may only be one element in the scheme to launder money, but as previously explained, some organized criminals do not steal art. Rather, some enjoy purchasing the art in order to give their illicit activities an air of legitimacy. Domestic and international laws are insufficient to control organized criminals. Thus, more must be done in order to combat the use of art to launder money.

### VIII. CONCLUSION: HOW TO PREVENT THE USE OF ART TO LAUNDER MONEY?

More regulations must be imposed upon the art industry to combat the use of art to launder money. Measures requiring auction houses to report cash transactions over \$10,000 must be habitually followed. Since the art industry is less regulated by the state than other traditional methods of money laundering, organized criminals have been able to utilize authorities' deficient monitoring to establish an effective means to launder money.

However, the art industry should be monitored and controlled as strenuously as the "traditional" methods of money laundering are, such as the real estate sector. The purchase of art, if over \$10,000, must be reported to FinCEN. Requiring art auction houses to file CTRs may increase the likelihood that money launders will be caught.

Further, it may deter organized criminals from even attempting to launder money through the art industry if they know that their purchases are being scrutinized. Additionally, art auctioneers must be held criminally liable if they knowingly accept funds acquired from illicit activities. This, too, may deter auctioneers from engaging in willful blindness if they know that all transactions are being closely being scrutinized to ensure legitimacy. Also, financial institutions and banks should be made clearly aware that many organized criminals are now increasingly using art as a means to launder money. This would assist these financial institutions and banks to carefully review transaction regarding art purchases, which will likely increase the frequency of SARs filed in regards to art transactions.

One of the main reasons why the art industry is so underregulated is because authorities lack the proper education to enforce regulations. For example, authorities are not sure when they are viewing a piece of artwork that it worth \$500 or \$500,000,000. As a result, authorities do

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196. Sultan, *supra* note 36, at 794 (stating "The UNESCO Convention . . . and the Unidriot Convention do not go far enough to combat the growing problem of art theft in the EU.").

not question the value of the art as it is declared on customs forms. One way to combat organized criminals' abilities to over-and under invoice the price of art is by educating those who are reviewing declaration forms. Customs officials should have a basic understanding regarding the selling price of a piece of art. However, since the price of art is so speculative, this may prove to be exceptionally difficult. Therefore, rather than requiring customs officials to become experts in valuating art, it may be more realistic to merely require officials to spot warning signals. Such warnings signals may be where the art is coming from,<sup>197</sup> the method of payment for the art,<sup>198</sup> and the purchaser's general interest in art.<sup>199</sup>

These proposed methods will not effectively combat money laundering through the use of art. However, they may prove useful in at least educating authorities that this method of money laundering is occurring with increasing frequency. The quicker authorities are made aware that organized criminals are laundering money through art the quicker money launderers are going to decrease how frequently they use art to launder their illicit gains. Unfortunately, however, the quicker authorities begin to more strenuously regulate the art industry to combat against money laundering, the quicker organized criminals will find a new, innovative way to launder their ill-gotten gains. These measures will only be a step toward winning the battle against the use of art to clean dirty money in the international war against money laundering.

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197. For example, is the art coming from a country that has lenient export regulations, or a country such as Switzerland, which is a known location to launder money through art?

198. If the art was paid for in cash this should raise a potential flag. Officials should be made aware that cash transactions are the easiest to clean dirty money.

199. Such as, is the purchaser a known collector or a first time buyer?