

## Money Laundering and Its Combat: Art, Football, and Churches

**Judge Fausto Martin De Sanctis**  
*Federal Appellate Judge,  
Brazilian Federal Court*

Date: 29 September 2015

Time: 6:00 pm – 7:00 pm

Venue: Social Sciences Chamber, 11/F, The Jockey Club Tower

*The moderator of this seminar was Simon Young, Professor and Associate Dean (Research), Faculty of Law.*

Judge De Sanctis introduced and discussed a topic that he has published extensively on, money laundering. Brazil is an interesting country to examine because of its ubiquitous cases of money laundering. The country set up specialised money laundering courts in 2004 to prevent such activity. Judge De Sanctis has served as a judge for twenty-five years and has been a Federal Appellate Judge since 2011. Prior to this, he served as a public attorney and a judge in state courts (1990-1991) as well as in district courts (1991-2011). He also has worked with the specialised courts, dealing with money laundering and financial crimes.

### *Brazilian Legal System*

Brazilian law has a civil law system where judges can only interpret the codified laws rather than create them. However more recently, binding precedent (*stare decisis*) has been used to determine the outcome of cases (as part of constitutional reform). After almost twenty years under a military dictatorship, a new constitution was established in 1988, paving the way for democratisation and political participation. The 1988 constitution holds overarching authority and is the supreme law in Brazil.<sup>1</sup> Brazil's structure and hierarchy of court is divergent as it is a Republic that was formed by a union of twenty-six states. The country has state and federal courts (and trial courts), twenty-seven state appellate courts (including one district court for the capital of Brailisa) and five federal appellate courts.

In addition to these courts, Brazil has superior courts and a supreme court, the former deals with questions regarding federal law and the latter deals with questions relating to the constitution. The hierarchy of courts in Brazil is as follows; the Supreme Court is the highest judicial body, the superior courts, specialised courts, state courts, regional and federal courts.

Additionally, the Regional and Federal Courts have jurisdiction over the state of São Paulo, where São Paulo represents sixty percent of all cases. São Paulo is Brazil's major financial centre, with a state population of fourteen million citizens. Federal jurisdiction is determined by the 1988 constitution, which has also included most cases. All cases involving federal governments, treaties, corruption from federal bodies as well

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<sup>1</sup> Amendments were made in 1996 but the laws of 1988 still stand

as that of financial crime fall under federal jurisdiction. However, cases involving other matters fall under state jurisdiction.

Judge De Sanctis commented that the judicial branch tends to exercise repetitive and excessive jurisdiction. Furthermore, the current system allows for the abuse of rights. An example he cited was that even if a defendant has not been arrested, he or she can still be charged in Brazil. He is somewhat critical of system, however the feasibility of reforms are currently being discussed in Brazil as he believes that changes need to be made in order to create a system that is rational and equal for all. To provide a better idea of the scale of the problem that Brazil faces, he emphasised that in 2014 there were seventy million cases that were still pending. Brazilian judges deal with millions of cases because it is easy for any Brazilian citizen to file for a lawsuit because the cost of doing so is free. Every case is dealt with in court.

On the other hand, in an attempt to solve such issues, certain reforms have already been implemented within system. For example, courts now refer to the binding precedent (*stare decisis*) to determine the outcome of cases, as part of constitutional reform. Reference to binding precedent is new because previously, the Supreme Court's decision was not necessarily the final decision, instead courts were able to interpret the law. However, now the Supreme Court's decision must be adhered by all courts, which for Judge De Sanctis is important. The review process of the various cases is vital in order to arrive at an equitable outcome. Furthermore, Brazil recently implemented a discretionary review process whereby the Supreme Court will only review a case if it is of vital interest to the nation. The Judicial National Council too has created new rules and standards. An example of this is that the court previously kept the defendant's properties until judge determined the final outcome. However, now if an individual has been indicted, the property seized will be sold and the money obtained from this transaction will be sent to a special judicial account until the end of the trial and the case. If the individual is convicted then the money will be sent to the federal government, if the individual has been acquitted then the money will be given to them.

As part of the on-going reform, civil and criminal procedures have been simplified. For Judge De Sanctis, this is an important element that will enable the legal system to combat corruption and financial crime. Another important development is the use of electronic lawsuits. Judge De Sanctis indicated that in around five years time, all lawsuits and most cases will be dealt with electronically. Today, cases in the Supreme Court are televised in order to ensure that citizens are aware of the arguments being made and witness the entire process. There are no secret sessions and Judge De Sanctis stressed that with the TV coverage, individuals can see for themselves the sort of arguments being made by the different judges, even if some of them act for the camera. He enunciated that this sort of social control is beneficial.

### *Money Laundering in Brazil*

Money laundering has manifested in spheres beyond banks, and Judge De Sanctis has dealt with cases in which financial crimes have been committed in different spheres such as art, football and churches.

The specialised money laundering courts were established as a result of the *Annual Strategy for the Combat of Corruption*. Meetings were held with sixty federal bodies including the judicial branch amongst others to brainstorm policies that will prevent money

laundering (policies addressing the laws and the infrastructure required). The Administrative Misconduct Act (1992), Anti-Corruption Act (2013), Criminal Clean Record Act (2010) and Free Public Information Access Act (2011) were all created after these meetings. Under the Anti-Corruption Act, corporations have strict liability (similar to the Foreign Corruption Act), where private companies are tried in the first instance. The owner of the company will be punished, if the company is charged. The Criminal Clean Record Act states that if a politician has been convicted after the final decision, then the politician cannot be elected. Politicians have the right to be judged by the Supreme Court. In all cases, there may be different levels of proceedings. The Free Public Information Access Act is an attempt to improve the transparency of the system, for example judges' salaries can now be found online.

The Money Laundering Act (1998) has facilitated the process of charging defendants, irrespective of convictions or acquittals. Before this Act, a list of preceding crimes had to be established to make accusations, now due to the Act this is deemed unnecessary. The Organised Crime Act (2013) has defined organised crime as involving at least two individuals and appropriating an amount of 12,850. In 2012, the Supreme Court gave the National Justice Council the ability to intervene in cases by means of further investigation.

#### *Money Laundering Through Art*

Judge De Sanctis has faced interesting cases dealing with money laundering in the art world. Having been to a Christie's auction in June 2012, he said that the ways in which auctions are carried are not as transparent as they appear to be. During such auctions, there are a number of individuals bidding for pieces and raising their prices but most of these individuals are intermediaries of interested buyers. They spend most of the auction on the phone but we do not know if they are really intermediaries. These individuals can manipulate these art auctions. Judge De Sanctis presided over a case in which a high profile banker, who at the time controlled Santos Bank, had laundered a large sum by transporting illegal paintings from Brazil to the United States. A number of artworks were involved in the case. One of the paintings 'Hannibal' was a 1982 Basquiat painting and part of a collection. The art works were later repatriated to Brazil. The main artworks were later put in public areas, and the bank was able to finance their restoration. If acquitted then the court stated that the artworks would be given back to him. However, as it was an on-going case, the courts still owned the art pieces till 2005 and the majority of people could see these works for free. Through false declarations a number of artworks were smuggled into the United States, before his arrest.<sup>2</sup> He was sentenced to twenty-one years in prison in 2006.<sup>3</sup>

Some of the other cases that Judge De Sanctis has presided over include the transportation of illegal drugs from Colombia to the United States. Submarines were specially constructed for this sort of organised crime. The defendant who was later

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Patricia Cohen. *Valuable as Art, but Priceless as a Tool to Launder Money*. May 12th , 2013. [http://www.nytimes.com/2013/05/13/arts/design/art-proves-attractive-refuge-for-money-launderers.html?\\_r=0](http://www.nytimes.com/2013/05/13/arts/design/art-proves-attractive-refuge-for-money-launderers.html?_r=0) (accessed October 16th , 2015).

<sup>3</sup> Ibid.

convicted, underwent plastic surgery in order to disguise himself from the authorities because he was attempting to flee the country. He stayed in Brazil for a number of years prior to his conviction, where he used the profits to buy mansions and boats. He was sentenced to thirty years in prison, mainly due to the thefts he committed in three hundred houses in the United States and his drug trafficking record. The art pieces involved in his cases were put in museums in São Paulo.

#### *Why Money Launderers have targeted the Art World*

The art world has been used as a means to commit money-laundering activities because transactions are not transparent. Secrecy and confidentiality are important characteristics of the transactions made in the art world. Usually the name and the address of the buyer and seller are included (but they will not meet face to face) but documents of identification can be false. The documentation of the art piece can also be false. The consignment document includes the name and contact details of the consigning artists, the description of the piece, the price, date and signatures. Judge De Sanctis highlighted that there is no information about the form of payment. Ninety percent of payments made to Christsie's are made in cash. The art houses or auctions choose to be self-regulatory but the sector is not widely regulated because various auction houses will accept cash from third parties. Outside parties will not be given any information about the buyer, seller or the price. It is important to know who has purchased the item because this could prevent price speculation. It becomes difficult to monitor such deals if little information is revealed. Furthermore, usually instructions will be provided as to where to deposit the artwork, but there are a few other regulations. Judge De Sanctis emphasised that it has become an attractive sector for criminals due to easy transportation of goods.

It was thought that the art world would not be an attractive sector for criminals and this is why regulations that describe criminal activity have not included the art sector. For example, the Financial Action Task Force (FATF) sets international regulatory standards however recommendation twenty-two (2012) does not include artwork as a potential means of criminal activity.

#### *Money Laundering Through Football*

There was a money laundering case involving two Colombian citizens and a football club. The two citizens were attempting to flee the country with a sum of fourteen thousand US dollars in hand. They refused to declare this sum of money, arguing that they had received the money from Santos FC after negotiations. They were pressed with capital flight charges. Brazilian and international football clubs are not new to money laundering or related illegal activities.

Money laundering cases involving football clubs tend to result in seized goods coming from suspicious activity, mainly because payment is done in cash. Also, the use of shell companies with the aid of specialised law firms can facilitate money-laundering initiatives.

Judge De Sanctis elucidated that that new standards need to be set to prevent illegal activities (in the football sphere). He suggested the following:

- (a) The members of GAFI/FATF should consider how agents, clubs and federations are obliged to report suspicious operations

- (b) Football clubs can be obliged to keep a record of contracts along with other mediation related contracts for a period of at least five years
- (c) Foreign exchange contracts arising from remittances to individuals or other legal entities can be guaranteed by contracts between the clubs and the football players;
- (d) FATF members can consider including complete investor identification, even if investors are represented by corporations in the country
- (e) Further mechanisms can be designed in order to ensure that tax havens provide all sorts of information, in a timely manner, when requested
- (f) The state of prisons, the lack of evidence along with the issue of confidentiality should not hinder international cooperation

### *Money Laundering Through Churches*

Judge De Sanctis handled a case in which a church was convicted of money laundering. The Universal Church's Bishop and leaders transferred the money received from churchgoers, out of the country using offshore bank accounts and bought properties in the United States.<sup>4</sup> The reason why this church was able to commit this crime was because the religious sector tends to enjoy a large degree of autonomy and constitutional protection, the state does not usually intervene in this sphere. Therefore, it is often difficult to identify illegal activities that can occur in this sector.

Furthermore, there are no theological requirements to register or to create a church. Judge De Sanctis indicated that it is in fact easy to create a 'fake' Church because there is no requirement for the number of followers and leaders only need to complete one document for the National Register of Legal Entities in Brazil. Judge De Sanctis proposed the following in order to prevent the creation of 'fake' Churches.

- (a) Church leaders should be required to submit information to the State especially information about donors and the use of donations
- (b) The definition of religion and religious institutions need to be applied in a consistent manner. For this reason, the definition needs to undergo careful consideration and it necessitates flexibility. Judge De Sanctis said that religion has two dimensions, a cultural dimension and a traditional dimension that includes rituals. It is about a community of like-minded people who identify with each other in ways other than prayer. (It is different from other forms of culture as it has a divine origin)
- (c) Religious institutions have historically been immune to legal proceedings in Brazil. However, sometimes they need to address a variety of lawsuits (from labour, fraud, to money laundering in today's day and age)
- (d) Leaders of religious institutions can be held liable for the accounts of the institutions

### *Further Comments from Judge De Sanctis*

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<sup>4</sup> Tom Phillips. *Brazil charges church leaders with embezzling millions from poor*. September 13th, 2011. <http://www.theguardian.com/world/2011/sep/13/brazil-church-embezzling-millions-poor> (accessed October 17th, 2015).

Judge De Sanctis stated that monitoring legal activities is difficult because certain sectors and situations can be quite sensitive. From his experience as a judge, some situations that appear to be legal are not. For example, he has heard of legal exchange credit brokers, he stressed that this is not legal at all. Money is sent abroad using these brokers but it is not possible to track money through them. Corrupt politicians and criminals tend to use this channel. Most of the time, a client's account will be used to transfer the money in order to hide such schemes. Earlier, it was assumed that money laundering only affects financial institutions, however the problem has spread to other spheres.

### *Question & Answer Session*

**Question:** *I wonder about resistance from the representatives from the art world and the religious world perhaps. To what existence is there a functional code of dependency going on here such that it would cause the devaluation in the art market. I mean what proportion of business involves this sort of money laundering and what kind of resistance would it encounter if you tried to regulate it?*

**Judge De Sanctis:** Firstly the market seems to account for 1.3 billion dollars in illegal transactions. I do not know if this is true or how big the market is. UNESCO has estimated that the total number of transactions in the art sector is around six million. But this is not your question?

**Response:** *My question is, yes, you can go after the criminals but your biggest foe is not going to be the criminals, it is going to be people part of industries that are dependent on this type of interaction to such a fundamental degree.*

**Judge De Sanctis:** The self-regulatory and confidential nature of the art sector is essential for the market, without them there is no market. The seller is not able identify the buyer. The financial situation is not good anymore. The price that is given or quoted is relative and can devalue the real price in the market. For me the important thing is to do something about this. The art sector is being exploited by criminals. People are saying that they are addressing the problem but they are not doing what we need right now. Criminals keep buying up the art; one individual had acquired twelve thousand works and they were later seized by the courts. However, no one prevented him from buying up or taking these art pieces in the first place. Criminal activity in this sector is like lighting on a Christmas tree, if one light goes out, they all do. If they address the system, we can prevent all crimes.

**Question:** *I research the illicit cultural property trade and I have a lot to do with the auction houses and yes they are indeed co-dependent on this sort of trade. I would like to know ... you say that a lot of the crimes that are discovered involving artworks are actually discovered in the process of another crime so for example money laundering. That is what we discover all over the world. Would you say that money laundering because they go after the proceeds of the crime, would you say that money laundering is the number one crime that they identify, that is, you know combines artworks or would it be related to drug trafficking or arms trafficking?*

**Judge De Sanctis:** In fact investigators have attempted to uncover the previous crimes of the defendants such as drug trafficking. For example here, the defendant committed the

crime of drug trafficking for years, channelling drugs from Colombia to the West (United States). He was convicted and arrested for his crime but then he escaped. Although he was engaged in money laundering activity in Brazil, his crimes were discovered by accident. The police had suspected that he was involved in illegal activity as he was always dealing in cash. The United States had been looking for him a long time. In order to combat money laundering, you need to combat previous crimes. To prevent illegal activity, you need to obtain the targeted properties. Money laundering is not just a crime it is more than that. Investigators should be allowed to seize the property of criminals to inhibit organised crime.

**Question:** *Do you have any authority to say what is then going to happen after these properties have been seized because Brazil is the chair for the UNESCO convention against the illicit trafficking of cultural property and they are definitely adamant about working together with anyone who is willing to combat the illicit trafficking of cultural property. But as a judge for example, are you able to repatriate any of the cultural properties seized?*

**Judge De Sanctis:** This is very interesting. The biggest problem I had in Brazil was to defend art pieces, to keep the art in a cultural institution. The reason why I am saying this is because in one case there was confusion as to where to send the art piece. In the beginning, the United States wished to share the artwork, half of it would stay there and the other half would go to Brazil. Costs of the respective halves could be reimbursed. They invited me to discuss this with them and that was very interesting because it was the beginning of international cooperation between Brazil and the West (United States). We were face to face with their authorities. I said that we should not halve the artworks. In the UNESCO Convention (*Convention against illicit export under the cultural property implementation act*), it states that when there is a fraud the state has to give back the artworks to the state (from which artwork originated). I went to the West (United States) and said that you also signed this convention. You need to follow the convention in the same way that we do (we are both signatories). Their response was that American and Brazilian internal laws are different and that is why this does not work. According to the Internal Revenue Service (IRS) code, you need to seize the artwork, sell it and then use the money attained to reimburse the other state (from which the artwork originated). In the end, all artworks were repatriated and the United States agreed with Brazil.

We have had big discussions because there was a financial crime committed by a banker. The creditors wanted to sell the artworks, but I was completely against this. They are still people out there who will buy the artwork again. They help bankers take money from lenders. Artworks seized by federal courts cannot be sold; they need to go to public and cultural institutions, citizens need to know that they were seized from individuals who were engaged in illegal activity. This argument was not accepted by the Superior Courts and the Supreme Court ruled that the artworks should be sold. However, this allows the defendant to buy the artworks again. The defendant can buy it from third parties and I have been trying to convince the West (United States) by saying this. They should not repatriate artworks without including the condition that it cannot be sold again in Brazil. In this case, the West (United States) did not agree, they said that it is an internal issue.

**Question:** *I am not going to ask you a very technical question, a question about political will. A UBS private banker laughed, but this was a serious enquiry. Not too long ago as an international money laundering capital, what we have here the explosion arts, of galleries going all over the place, triads and organised crime. Macau, money laundering it is an open scene, London and Switzerland are not really serious, it has happened everywhere. Is there a political will? If a Swiss Banker laughs at me, asking me if this a serious enquiry into where money launders come from. There are principal and reliable reports ... the money laundering capital, over here, you talk about the art world, in five or six years time, twenty art galleries to a hundred and fifty two to two hundred or even half a thousand art galleries will be transferring money ... in China, Switzerland and London. Is there a serious political will to tackle this?*

**Judge Sanctis:** It depends on the case. I had a case in London. English citizens are protected, and they refused to send their citizens. It depends on the case. I can say that in general they have this problem as well, a lot of money laundering cases exist, money laundering through art in Asia is prevalent. In my book, I mention some cases about Asia. It exists and is a problem that is quite evident, they need to do something about it but I don't know about your question.

**Moderator:** *What do you think about Brazil? What do you think about the Brazilian government's attitude towards this?*

**Judge De Sanctis:** Yes, I want to discuss this with you. Good question. I want to discuss the financial intentions unit (FIU). Previously, individuals in the FIU mentioned that artworks were not important and that the Unit should focus on other sectors, where money laundering is greater. The Unit no longer believes this. Increasingly, there are more high profile cases in art and nothing is being done about them. In Brazil, only a few have the power to investigate money laundering in the art sector. The counsel has the power but tends to focus on other sectors. We need to change this culture, because it is not just financial institutions that have been affected. There are three commonalities that exist between all three sectors, football, churches and the art world. These are anonymity, confidentiality and relations with others.

Indubitably, FIFA has caused problems in the football sphere. We need to ask how we can deal with this problem on the behalf of religious institutions such as churches and clubs in the football sector. FIFA is not reliable. The fact that authorities accepted and allowed FIFA to impose rules on Brazil during the World Cup was unbelievable. Brazil had to accept certain obligations to host the World Cup and it was unbelievable that they were accepted. FIFA authorities were given the power to arrest individual (under a law), only because of the World Cup. This was a breach of our constitutional honour.

**Moderator:** *What was the purpose of this? Arrest people for what?*

**Judge De Sanctis:** FIFA arrested individuals for commercial violations. Everyone could only sell for example, beer from one specific company. This specific company would negotiate with FIFA beforehand and then only their products would be sold. For example, individuals or concession stands were not allowed to sell other types of beer in the area, two kilometres around the stadium. This became a rule that everyone had to follow.



**Moderator:** *I am very mindful of the time; we are a little over already. Does anyone have any last pressing questions or comments? So if not, I will bring tonight's really engaging seminar to an end. On the behalf, of the two Centres, the Centre of Comparative and Public Law and the Centre of Criminology, Judge De Sanctis, thank you for your extremely interesting presentation tonight.*