

Working pro bono to reverse conviction of John Connolly for Boston mob-related crimes

Tresa Baldas

June 24, 2009

Attorney James McDonald, former FBI agent and one-time federal prosecutor, has a nose for rats, rogue investigators and crooked informants.

He also knows a government frame-up when he sees one, he claims, which is why he has spent the past three years working pro bono for former FBI agent John Connolly, who is currently in prison for convictions stemming from his relationship with mobsters Whitey Bulger, Steve Flemmi and Boston's Winter Hill Gang. Prosecutors allege that for years, Connolly, who was assigned to organized crime cases in Boston from 1973 to 1990, protected his top mob informants, tipped them off to investigations, falsified FBI reports and accepted bribes.

The scandal served as the inspiration for Martin Scorsese's Oscar-winning film "The Departed," which featured Matt Damon as the character inspired by Connolly — a cop who worked as a mole for the mob.



Gunster's James McDonald

McDonald, a shareholder in the Miami office of West Palm Beach, Fla.'s Gunster law firm, has never seen the film in its entirety. Doesn't have the stomach for it, he says.

It's what happened to the real-life Connolly that interests McDonald, who believes an agent who helped dismantle the New England mafia has been hung out to dry.

Connolly, who grew up in a South Boston housing project with the well-known mobster Bulger, was indicted in 1999 on charges of alerting the Mob to investigations, falsifying FBI reports and accepting bribes. He was convicted in 2002 and sentenced to 10 years in prison.

More recently, in January, Connolly was sentenced to 40 years in prison for slipping a tip to Boston mobsters that led to the 1982 shooting death of Miami gambling executive John Callahan. The judge said that Connolly "crossed over to the dark side."

More like he was set up, protests McDonald, who believes Connolly was the government's fall guy.

McDonald said that during the past three years, he has amassed evidence that shows that the government used gangsters as its top echelon informants, let them engage in gambling and loan sharking, and turned a blind-eye to various crimes that happened along the way. But when these informants wound up getting charged with serious crimes, and tried arguing, "Wait a minute, we were allowed to do this," he said, the government denied any such deal existed.

That's when they pointed the finger at Connolly, he claimed.

"I think at this point the government needed someone to take the blame, and John Connolly was the man, because John Connolly refused to play along with the government. In other words, they wanted John to say, 'There was no such deal.' And John said, 'There was such a deal.' "

Connolly, 68, whose story will be featured on NBC Dateline this Friday, is currently appealing his Florida conviction on a number of grounds, including prosecutorial misconduct.

Earlier this week, McDonald spoke to *The National Law Journal* about his client's ordeal with the government and his own legal fight to save a fallen agent.

NLJ: For starters, how did you get this case?

JM: Well [laughs], I got the case through a roundabout way. A friend of mine is the former governor of Oklahoma — Frank Keating. We were agents together. Frank and I were at a meeting at the Willard Hotel about three years ago, and he casually mentioned something to the effect of, "It's too bad about John Connolly." I basically knew that he had been convicted. He said he believed that John had really gotten railroaded, or framed. And I said, "Well, that's interesting." And he said, "Well, John's down in Miami." It just piqued my interest. And then, when I got it into it, based on my analysis, [I decided] Connolly has been screwed here. I decided to donate some time pro bono assisting his court-appointed lawyers.

NLJ: Why is it this case so important to you? Why have you agreed to do it pro bono?

JM: Well, it's important to me because I'm a former prosecutor and a former FBI agent, and I don't like to see the process abused....I think there's a problem. Based on my review of the evidence, and the quality of evidence that has always been brought against John Connolly, I think John has been wrongfully convicted in both cases. But I'll say this: The Connolly case, especially in Boston, has taken on a life of its own. People up there — it's conventional wisdom that Connolly is corrupt. It has become common lore up there. That's why, when you get into this Connolly mess, it's very scary how the system can get out of control, and lie can be built upon lie....Connolly did his job as an agent. He didn't cross the line. He was not corrupt. And he is a victim of prosecutorial misconduct.

NLJ: How so?

JM: I think what they've failed to do is turn over exculpatory information to John in his Boston case, highly relevant and exculpatory information. And we've filed a motion down here [to get that information]. Where they claim that John was protecting his informants,...John's position always was, "We had an agreement." It was the Department of Justice that agreed that these guys, these gangsters, could continue on as top echelon informants.

NLJ: So was he the fall guy?

JM: Absolutely. I think the prosecutors — in indicting Bulger and Flemmi for crimes which the government had agreed that they could continue to commit, namely gambling and loan sharking — I think the U.S. attorney's office in Boston found itself...far out on a limb when these informants started to say, "Wait a minute. We were informants. We were allowed to do this." I think at this point, the government needed someone to take the blame, and John Connolly was the man, because John Connolly refused to play along with the government. In other words, they wanted John to say there was no such deal, and John said, "There was such a deal."

NLJ: You've mentioned that you've discovered a secret prosecution memo that was written in a 1979 race-fixing case, in which which the DOJ allowed mobsters to continue as informants, despite their crimes. How relevant is that to Connolly's case?

JM: What was never disclosed to Connolly in his first trial was the existence of this memo, which we believe is Brady material. It's exculpatory to John. It says, when reading it — it basically corroborates what John is saying: that it's not John Connolly giving [informants] the pass [to continue being top informants despite their crimes.] It's the Department of Justice. When John was being tried in Boston, that memo was never produced in discovery.

NLJ: So are you still trying to get this memo?

JM: Absolutely. We never got it. It's — I believe — a concrete example of the government playing fast and loose and doing anything to win at all costs.

NLJ: Do you ever get scared working on this case, given all the high-profile mobsters tied to it?

JM: No, why would I get scared? There are some cases that come along in your life as a lawyer where you know you have to do the right thing. When I saw what happened to John, I thought, "I've got to help this guy out."

NLJ: I've heard that you went to school with Connolly? Is that correct? What do you remember about him?

JM: He was an agent and we were both on the same squad in San Francisco in the early '70s. But other than to nod and say hello, I really didn't know him well at all. When I met him again in the jail in 2006, that was the first time I had seen him in 35 years.

NLJ: How close was the movie "The Departed" to the real issues going on?

JM: Honestly, I have not watched the movie because I don't have the stomach to watch [it]. I saw parts of it on an airline. Someday, I will probably watch it though....I think people, like with any movie, they take liberties.

NLJ: Has the movie tainted your case at all?

JM: No, no. A movie is a movie. No, not at all.

NLJ: So is it your belief that Connolly has unfairly been labeled as a rogue agent?

JM: They think he's the rogue agent, and I'm saying that from everything I've seen, when you look at the key witnesses that the government puts on, they put on the killers. The key witness against John Connolly was the trigger man who killed John Callahan. He's admitted to 20 killings. Our first witness was U.S. District Senior Judge Edward F. Harrington He's the former U.S. attorney for the District of Massachusetts. He testified that he was very familiar with the use of informants, and the work that Connolly had [done]...We put on retired FBI agents who testified for John.

NLJ: What's your strongest piece of evidence?

JM: There's a lot of evidence that, if you pull it all together, you see the web of how it's been woven by the government. We've got information that the key witness against John in Boston admitted, while he was in jail, and bragged to cellmates that he lied about Connolly on the stand, and said he was coached by prosecutors on what to say.... I know as a former federal agent, and from Connolly, how you work with informants. Connolly said, "Did I know they were murderers? Yeah. Did they ever tell me who [they were] going to kill? No, because I would arrest them." That's how you work with informants. You make a deal with them. Because if you want to take out the mob, or you want to take out al-Queda, do you think you hire some altar boy? You gotta get someone close to the top, and that's what the government did when they used top echelon informants."

NLJ: So what have you learned handling this case?

JM: The whole thing has shocked me. I am always open to somebody showing me evidence of John's guilt, but I've not seen it. I've seen what the government puts on. I've seen serial killers testify. I think the thing that bothers me — as a lawyer and as a former prosecutor — we all know as a prosecutor, you take your witness where you find them. And there are many times you have to use criminals. It's all you have. But you have to make a value judgment of when you believe somebody. And in this case, the government has chosen to believe, every stop of the way, the words of serial killers over the words of honest people, like all the agents who testified for John, and the judge who testified for John....From everything I know, from all my countless meetings with John, he has always been consistent. You get a sense when people are lying or not. I'm 99.9% sure here.