

The Investigation of a Wrongful Conviction: The Jonathan Fleming Case

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On April 8, 2014, Jonathan Fleming became a free man after serving almost 25 years of his life in the New York prison system for a murder he did not commit. News of his exoneration captured the world's attention and hearts.

Taking a look back, Bob Rahn and Kim Anklin, principals of Management Resources LTD of NY, reflect on their experience as the investigators who turned up the evidence that ultimately lead to Fleming's exoneration.

“Our 12-year professional relationship did not include criminal defense investigations until 2008.” says Anklin and Rahn. They had been invited to attend a NECOSIA (New England Council of State Investigator Associations) conference where they were moved by F. Lee Bailey's passionate speech about how crucial the role of a criminal defense investigator is when defending a person accused of a crime. Bailey talked about the imbalance of the system for the accused and how much power and resources prosecutors possess, while the defendant likely had to find an attorney who would be willing to go up against such power and find funds to pay for a strong defense.

Kim and Bob were discovered through a Google search by the family of Jonathan Fleming. They explained he had been in prison over 23 years at that time and was serving a 25 to life sentence for a 1989 homicide in the Williamsburg Housing Projects of Brooklyn, NY. The family and Fleming claimed he was on vacation in Orlando, FL at the time of the shooting death of Darryl Rush.

While making contact with Bob Rahn and Kim Anklin, they also expressed their concerns about hiring yet another team of investigators because those they had hired in the past did not deliver results they had paid for. Another concern was that Rahn was a retired NYPD Brooklyn based homicide detective around the time of Fleming's original case. They asked ‘Would you be able to take on all that was wrong and fight for Jonathan's freedom?’

Fleming's current defense attorney, Anthony Mayol, urged the family to again put their trust into hiring private investigators in order to move the case forward. He needed evidence that would convince the court to hear a motion to vacate the conviction, as he tried unsuccessfully to personally fulfill the investigative tasks, such as locating witnesses and convincing them to come forward.

After encouraging Fleming's family to thoroughly verify the references of Rahn and Anklin, they recommended a conference between all parties including Fleming to answer their concerns. The

family's apprehension and caution was justified due to the complexities of investigative, prosecutorial, and political issues surrounding the case.

Anklin says,

On April 7, 2013, Bob and I were handed all case materials that Attorney Mayol had, and the responsibility of disproving a 24-year-old homicide case with a man's innocence now rested on our shoulders. Anthony Mayol was entirely committed to Fleming, but as sole defense practitioner and not an appellate attorney with endless resources, he was at a standstill. He believed in Fleming's innocence completely and didn't want anything to impede the chance of winning his client's freedom.

While confident in their skills and experience, Rahn and Anklin knew that rare successful outcomes of post-conviction relief took time, focus and dedication. Anklin began with the daunting task of sorting and organizing the contents of the case files, police reports, transcripts, and witness affidavits. She found the case had not only a fantastic alibi defense, including plane tickets, hotel receipts, but witness testimony so outrageous anyone would cringe, that led them to think 'how could anyone bring this case forward?' After finding so many verifiable issues with all aspects of Fleming's case, she set out to convince Rahn that they needed to do whatever it took to prove or disprove his guilt or innocence.

Anklin says, "During many long nights of poring through research and articles, fate seemed to step in. I decided to take a break and picked up the recent copy of PI Magazine. One of the featured articles was Susan Carlson's "Post-Conviction Relief...The Role of the Legal Investigator."

Susan wrote: "What is it that we as defense investigators are attempting to do? We are looking to drive a stake though it – by identifying procedural errors or evidence that could not have been identified prior to the original trial and that could have affected the outcome of that trial. A post-conviction investigator must meticulously review each document in the case file, analyzing its contents for comprehension and strategy solidification. Simultaneously, we are looking for inconsistencies, mistakes, procedural errors and constitutional rights violations. We must have solid grounding in the law to be a key member of the team, for it is very often during the preparation step of the investigation that a basis for an appeal or post-conviction petition is found. This preliminary preparation can be very time consuming, and requires a solid commitment and understanding of the heavy burden of responsibility."

"Susan unknowingly gave us a way to clearly articulate the step-by-step process, what it takes to fully accept a post-conviction case as an investigator, and what any family should expect from

any investigator they hire. This was exceptionally true in wrongful conviction cases where by a man's life stood still such as Jonathan Fleming's."

After the initial assessment of case files, Rahn and Anklin traveled to the crime scene and placed themselves in the position of the one and only eye witness and others who provided statements to the police in 1989. It was immediately apparent that the eye witness testimony was erroneous.

From the location where the eyewitness testified she was during the homicide, Anklin and Rahn found that in relation to where the victim was shot 427 feet away, she said she stood in a hallway looking through a window with thick horizontal bars. She testified she saw the shooting across a dimly lit courtyard, with trees in full foliage. She also had admitted to being under the influence and was not wearing her glasses prescribed for distance.

It was discovered that this witness was given a deal in exchange for her testimony. Told by the prosecution she was probably not going to be needed as there were others who stated what they saw, she tried desperately to convince prosecutors that she had lied. Warned that she would then be charged with perjury, she had to consider that when the trial began 11 months after the shooting, she was now seven months pregnant and would be having her baby in jail if she didn't go forward. After Fleming was convicted, and before the sentencing hearing, the witness fully recanted her testimony, but was now not believed to be credible.

At the legal end of the case, Anklin says, "We decided to proceed with a two pronged approach. We contacted several high profile criminal defense attorneys and appellate attorneys and, to our surprise, nobody wanted to touch the case."

Citing that these cases were almost impossible to get overturned, and finding no interest from any other defense attorney but Mayol, the Management Resources team turned to the Conviction Integrity Unit of the Kings County District Attorney's Office. Formed in 2011 to conduct reviews of convictions, research on this unit was done to be sure it was legitimate and functioning the way it was supposed to. Although apprehensive about a unit investigating its own convictions, Bob and Kim found the Bureau Chief, John O'Mara's reputation was beyond reproach. It was collectively decided to present to Mr. O'Mara Jonathan Fleming's case.

The compelling evidence for the CIU was a signed affidavit from one witness that was never before obtained. In summary, this witness had information that confirmed Jonathan Fleming was not involved, and the witness was never questioned by the police.

In what was considered to be an unprecedented move, the CIU then allowed for a joint cooperative investigation. Bob and Kim worked with their DA investigators and Attorney Anthony Mayol worked with the assigned ADA. Combined strategies identified additional witnesses never interviewed by the police. The result, another witness was located in South Carolina who emphatically confirmed that Mr. Fleming was not the killer.

Upon returning from SC and during a follow-up meeting with members of the Conviction Integrity Unit, the assigned ADA turned over to the defense the infamous telephone receipt and a letter from the Orlando Police Department stating that in 1989, they interviewed hotel employees in Florida who remembered Mr. Fleming. In other words, the suppressed evidence was there the entire time. These two documents were never turned over to the defense counsel at the original trial.

Also discovered were police department logs which corroborated the eye witness' statement that she was given a deal by the prosecutor, whereby felony charges against her would be dropped in exchange for her testimony against Fleming. Again, this information was never disclosed at the time of trial.

However, that alone is not what exonerated Jonathan Fleming. What began with a defense investigation, took convincing a District Attorney's Bureau Chief, who had the courage to authorize an unprecedented joint investigative effort, including speaking to numerous witnesses that supported the evidence, is what was needed to make their decision to hear the motion to vacate Fleming's sentence.

Ironically, twelve months to the day, April 7, 2014, a phone call from Jonathan Fleming from Wende Correctional Facility stated that his counselor had just left his cell. She told him she had received parole board hearing materials from his attorneys, his investigators, and his friends all supporting his release; however, she didn't think he was going to need them.

She then said the words he longed to hear; that the next morning he was to be escorted for a scheduled appearance before a Brooklyn Supreme Court Judge.

On April 8, 2014, as the world watched, Jonathan Fleming listened to Judge D'Emic vacate his conviction and legally tell him he was free, a completely free man.

After hugging his defense team, the tears fell as he ran to embrace his mother.