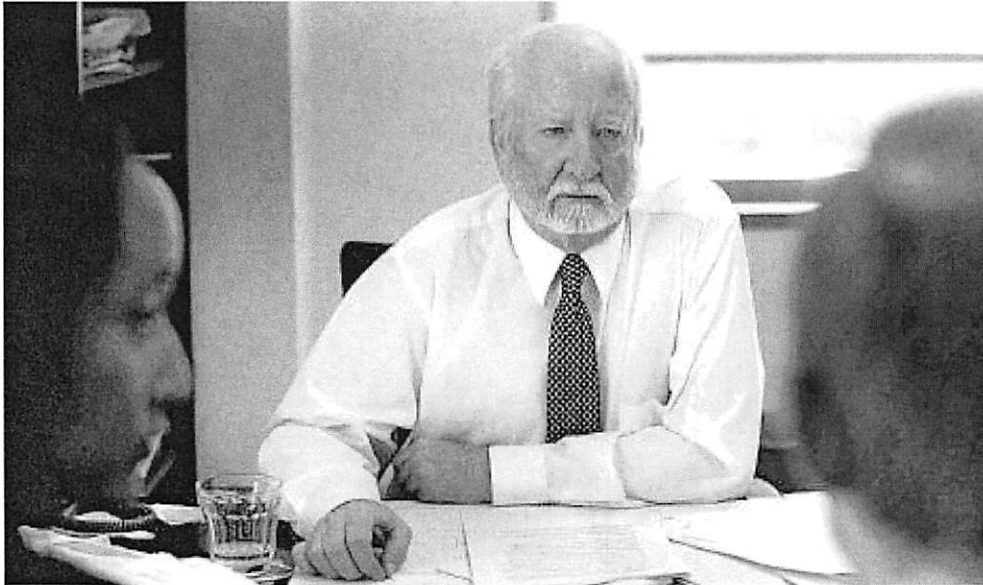


# DA unit restores lost innocence

## Bexar Co. has joined Texas trend to check for wrongful convictions

By Bruce Selcraig STAFF WRITER



Billy Calzada / San Antonio Express-News

Jay Brandon of the Conviction Integrity Unit and his staff of two attorneys have reviewed 250 cases in their first year and are now working on a dozen.

When Jay Brandon goes to work each morning in his third-floor corner perch at the Bexar County District Attorney's office, he often finds himself poised between an ironic pair of facts.

In 34 years, Texas has carried out 534 executions, nearly five times more than the state with the second most, Oklahoma. Yet Texas, having freed more than 215 prison inmates in 20 years, including several from death row,

now leads the nation in the exoneration of wrongfully-convicted people.

It's a seismic cultural shift for a tough-on-crime state. Brandon is part of it. A former San Antonio defense lawyer and prosecutor, he runs the office's year-old conviction integrity unit, where a small team of lawyers is methodically examining past prosecutions, looking for flaws that might justify a new trial, or in some cases, release from prison.

District Attorney Nicholas "Nico" LaHood created the office shortly after he was sworn in last year.

"I hate to think there are innocent people in prison, but we know there are," Brandon said in a recent interview.

Just last week, a judge recommended new trials in Bexar County's highest-profile questionable conviction: the case of four San Antonio women accused of a 1994 sexual assault of two girls, ages 7 and 9. LaHood will wait for the Court of Criminal Appeals to review the recommendation but has indicated he plans to dismiss the charges outright.

The accused, who were 19 to 21 at the time of their 1994 arrest, maintained their innocence and refused plea bargains. Their accusers' stories repeatedly changed. But juries at two trials sent them to prison. They came to be known as the "San Antonio Four" by the time they were released after serving up to 13 years.

One accuser has recanted and much of the prosecution's forensics testimony has been discredited as outdated science. Their lawyer, Mike Ware, director of the Innocence Project of Texas, is seeking a full exoneration.

District attorneys in places as large as Los Angeles and Chicago and as small as Oneida County, New York (population 235,000), now have CIUs. In 2007, Dallas County created what is believed to be the first CIU in response to a score of DNA-based exonerations that gained notoriety for a former district attorney, Craig Watkins.

Harris, Tarrant and Travis counties also have CIUs, the most active of which, in Houston, has led the nation in exonerations the past two years, eventually overturning 73 convictions, most of them drug cases with faulty evidence.

"I'm very proud of what is happening in Texas," said Barry Scheck, co-founder of the New York-based Innocence Project. "I've worked on dozens of cases in Texas over the last 20 years, and you have some of the best CIUs in the country. I've heard Nico LaHood speak in Brooklyn at one of our conferences; so I have the highest confidence in the new CIU in Bexar County."

CIUs get hundreds of desperate letters each year from inmates and their families begging for what is known in legal parlance as post-conviction relief.

"They're very emotional. They say we're the answer to their prayers," Brandon said of the often hand-written appeals. "They usually say, 'Please review my son's case.' But that's not how it works.

"We're not starting from scratch. You have to give us some specific information about what was wrong with the trial, some new evidence, some kind of claim."

Brandon said he and his staff of two attorneys have reviewed about 250 cases in their first year and are now actively poring over about a dozen.

There's a death penalty case in a file box behind Brandon's chair. A questionable "shaken baby" conviction is on the far right corner of his desk, across from a father's letters about the

"excessive sentencing" of his son. Another pile pleads the case of a young woman alleging she was assaulted by a suburban cop.

The death penalty conviction came out of "mixed-DNA" testing, often found in rape cases, where both the victim's and perpetrator's DNA might be present in the tested sample. The jury was told there were astronomical odds against the defendant not being the person whose DNA was found. But under a different testing protocol, Brandon said, those odds could be dramatically reduced.

"He may or may not be innocent," Brandon said. "But any jury deserves to hear that the odds may have gone from 1-in-200 million to 1-in-100,000. It's only fair."

The CIUs in Harris, Tarrant and Dallas counties will reexamine tens of thousands of mixed-DNA cases, but Brandon says the Bexar County crime lab used a more appropriate DNA test, so his office has only had to send about 150 letters to defendants alerting them to the potential need for re-testing.

The CIU unit has even sought to overturn the conviction of a shoplifter who did not speak English and could not sufficiently understand her lawyer's advice or the court documents she signed.

"Shoplifting is just a misdemeanor, and she got five years probation," Brandon recalled. "But probation can be huge in San Antonio because it makes you deportable."

Brandon is clearly troubled by the shaken baby case.

A young mother from Puerto Rico was convicted in 2008 of deliberately injuring a friend's son by violently shaking him. She testified that she only playfully tossed him in the air. He has recovered from his injuries. She has served four years of a five-year prison term.

But now the science underlying the prosecution's expert testimony has been repudiated across the country, as has much of the science behind bite-mark identifications, microscopic hair analysis and the burn patterns once thought to prove arson. Faulty forensic science is the second leading factor in wrongful convictions, after eyewitness misidentification, the Innocence Project reports.

The most frequent complaint Brandon hears from letter-writers is about lousy defense lawyers.

"We hear lots of broad conspiracy theories about manufactured evidence," Brandon said. "One guy wrote to tell me that his lawyer and the prosecutor conspired to send him to prison. I know both of them, and they hate each other. They couldn't have a two-second conversation, much less conspire. So it's good to know the players involved."

One of Brandon's staffers, Matt Howard, a 2010 graduate of St. Mary's University School of Law, said poor lawyering is not difficult to find — exoneration experts say it's most common with indigent clients — but proving that it was at a level of incompetence that would impact a verdict is difficult.

Brandon said one Texas case has sensitized police and prosecutors to the risks of misconduct: the release after nearly 25 years in prison of Michael Morton, who had been falsely accused of killing his wife, and the disbarment of his Williamson County prosecutor, Ken Anderson.

"It scares the bejeezus out of me," agreed Inger Chandler, chief of Harris County's CIU. "Michael Morton has changed the way we think in Texas."

Chandler said she had another well-known Texas exoneree, Anthony Graves, speak to Harris County prosecutors. Graves, an African-American from Burleson County, was released in 2010 after serving 16 years on death row in a case riddled with false forensic evidence, perjury and official misconduct.

"Some prosecutors were crying," she said.

Brandon hasn't found any compelling case of such misconduct, though lawyers who know him say he would be able to prosecute one of his own if he had to. They say Brandon, 62 and the author of 17 legal thrillers, including "Fade The Heat," which was optioned by director Steven Spielberg, is above all else, trustworthy.

"If Jay said it, I would assume it to be true," said Ware, the San Antonio Four's lawyer who as a prosecutor set up Dallas County's first CIU.

Texas Court of Criminal Appeals Judge Barbara Hervey agreed.

"You've always got 'trial studs' who shoot from the hip," she said of some prosecutors. "And they're great with juries, but sometimes it can get dangerous. Jay was never like that."