

Texas executes possibly innocent man after 31 years on death row

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On Friday, the state of Texas executed a man who was quite possibly innocent of any crime. Lester Bower, 67, was given a lethal dose of pentobarbital at the Huntsville State Penitentiary near Houston, after spending three decades on death row. He was the oldest prisoner to be executed in the United States since the death penalty was reinstated in 1976. The Supreme Court rejected his final appeal.

Bower was accused of killing four people in an aircraft hangar near Dallas in 1983. Throughout, he insisted on his innocence, citing compelling evidence of prosecutorial misconduct and attorney negligence. As he lingered on death row, enduring six previous stays of execution, new evidence emerged that cast serious doubt on the prosecution's case.

In his final statement Bower wrote, "Much has been written about this case, not all of it has been the truth, but the time is over and now it is time to move on. I want to thank my attorneys for all that they have done. They have afforded me the last quarter of a century."

In addition to seeking appeals on the basis of the conduct of Bower's trials, his lawyers have also argued that spending three decades on death row violates the US Constitution's Eight Amendment, which bans cruel and unusual punishment.

In 1983, Bower was a 35-year-old chemicals salesman with a wife and two children and did not have a criminal record. On October 8, 1983, he agreed to buy an ultra-light plane from a building contractor named Bob Tate. Tate, Ronald Mayes, Phillip Good and Jerry Brown were shot execution-style in a hangar near Sherman, Texas. The killings were described as a professional assassination.

The FBI questioned Bower after phone records showed he talked to Tate. Bower denied calling Tate for fear, according to his account, that his wife would

find out about his attempt to buy a plane, which she was against. Parts of the plane were discovered in his garage and he was arrested. No witnesses to the crime and no murder weapon were ever recovered to directly implicate Bower in the murders.

Prosecutors argued that Bower wanted to kill Tate to steal his plane and that he killed the other three when they unexpectedly showed up. The fact that one of the victims was a former police officer and another was a sheriff's deputy helps explain the vindictive character of the state's proceedings against Bower.

Prosecutors falsely insisted to jurors that Bower, a licensed weapons dealer, had access to rare subsonic ammunition that only 15 people in Texas could acquire. The conviction rested entirely on circumstantial evidence.

Since Bower was convicted in 1984, witnesses and documents have emerged to suggest that the killings were caused by a drug deal gone wrong. A report in the *Intercept* notes: "In December 1983, the FBI was told that local drug supplies had dwindled after a source was 'knocked off in Sherman.' Bower's lawyers point out that, at the time, there were no other murder victims in Sherman, Texas apart from the bodies found in the hangar. What's more, at the time, allegations existed that one of the victims, Tate, had been involved in cocaine trafficking in the years leading up to the murders—allegations that investigators knew about. But these claims went un-investigated—including by Jerry Buckner, Bower's trial attorney."

Later, in 1989, a witness, "Pearl," came forward to report that she knew who the actual killers were—her then-boyfriend and his associates in connection with a drug deal. The *Intercept* notes, "Pearl's story, which she has testified to several times, has been corroborated by others—including the wife of one of the men, who

said she too knew that her husband had been involved in the hangar murders.”

One of those implicated by Pearl admitted that he possessed the type of ammunition that had been used in the murders.

Despite these facts, Bower’s appeals were repeatedly denied. In 2012, state judge James Fallon rejected Bower’s appeal for a retrial, stating that even though Bower’s latest evidence, “could conceivably have produced a different result at trial, it does not prove by clear and convincing evidence that [Bower] is actually innocent.” The state killing had to proceed.

Problems in Bower’s connection were numerous. The prosecution lied and his defense attorney pursued a disastrous legal strategy. Moreover, Supreme Court Justice Stephen Breyer wrote in a dissenting opinion in March that the failure by the trial judge to allow jurors to consider Bower’s previous clean record was a “glaring” and unconstitutional error that should have prompted a new trial.

Arguing against any further stay in his state-sponsored murder, attorneys for the state of Texas proclaimed that it was Bower’s own fault that he spent 31 years on death row. “Bower has consistently litigated his case without stop over the last thirty years. Any delay is purely of his own making.” He should have simply allowed his execution to proceed...

Texas has four more executions planned from June 18 to October 6. During Bower’s stay on death row, Texas has executed 522 prisoners. The average length of time a person has been on death row in the state is 10.82 years, according to the Texas Department of Corrections.

The only person to have served more time on death row in Texas was David Powell, who was executed in 2010, 32 years after his conviction.



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