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# Should Brian Nichols Be Tried in a Federal Court?

Ronald Carlson

*University of Georgia School of Law, leecar@uga.edu*

Donald E. Wilkes

*University of Georgia School of Law, wilkes@uga.edu*

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# PRO: A good way to renew public confidence

By RONALD CARLSON

Federal prosecution of Brian Nichols is needed now.

On the recent night when it became clear that Nichols had escaped the death penalty, the public responded. An early WSB-TV poll reported that 86 percent of sample viewers condemned the sentence as "too light." Public discontent was also fueled by news reports one juror solved crossword puzzles in the jury room.

Major Atlanta public figures, including Fulton County District Attorney Paul Howard and AJC Editorial Page Editor Cynthia Tucker, have expressed their dissatisfaction in opinion articles on these pages. For Howard, one of his biggest disappointments was the "three jurors [who] would not engage in [jury] discussion" and the one who reportedly worked a crossword "to preclude further discussion." Tucker rightly decried a climate of litigation delay that she said rendered the Nichols saga "a mockery of justice."

These commentators reflect the public's disgust for all things Nichols. Repairing his damage to the justice system is an urgent goal. Federal courts hold the key. They have provided justice in the past when the public confidence was in desperate need of a lift. The Rodney King beating in Los Angeles and, closer to home, the Derwin Brown homicide in DeKalb County pro-



► Ronald Carlson is Fuller E. Callaway Chair of Law Emeritus at the University of Georgia School of Law.

vide prominent examples of federal intervention. So do a multitude of civil rights prosecutions.

There is strong evidence that customs agent David Wilhelm was brutally killed by Nichols after Nichols found out he was a federal agent, and because of it. Remember, Nichols' rampage was directed against any and all officers of the criminal justice system. Federal law protects against attacks on agents who are killed on account of the fact that the agent performs official duties. The Wilhelm homicide would seem a classic case of such a murder.

Turning to federal authorities for assistance helps to resolve ambiguities respecting the future housing of Nichols. As an escape artist, he may dream up breakout opportunities previously unanticipated by state correction officials. If convicted in a federal trial, whether or not a death penalty is assigned, there would seem little uncertainty respecting his whereabouts. The federal Supermax prison is in Colorado.

Along with fellow federal prisoners like the Unabomber or the Oklahoma City bomber, future jail pressures would not

force him out of the place and back to a state facility. In Colorado's Supermax, prisoners are constantly watched by closed-circuit cameras and are in lockdown for 23 hours a day.

Still to come in Georgia's processes are several avenues for Nichols to pursue. Nichols can appeal his state sentence, and in future years can bring habeas corpus actions.

A potential federal sentence would ensure against any future release. For those saddened by Wilhelm's tragic demise, there would be a condemnation of his killing by the very federal courts he so ably served.

Final considerations are cost and delay. Fortunately, federal courts are able to deal with both. With billions going for corporate rescues and stimulus packages, a case like Nichols' cries out for support. Funding justice is at least as important as a company bailout.

Much of the cost, of course, will be reduced by promptly bringing the case to federal trial. Three and a half years will not be needed. Aided by information disclosed during the state litigation, prosecution and defense can get right at it. A good way to renew public confidence would be to emulate the model of Judge James G. Bodiford in holding fast to established deadlines. Let's fix a time for announcing a federal prosecution. And let's make it sooner rather than later.

# CON: It's unnecessary; unlikely he'd be convicted

By DONALD E. WILKES Jr.

One hour after Brian Nichols was sentenced in Fulton County Superior Court to serve consecutive four life sentences without possibility of parole, seven life sentences with parole possible after 30 years and additional sentences of imprisonment totaling 485 years, Fulton County District Attorney Paul Howard suggested something stupendously stupid. He proposed retrying Nichols, this time in federal court, for one of the murders for which Nichols had just been sentenced to life imprisonment without parole.

Capital punishment, like torture, is so corrupting that it deranges its advocates.

Even though Nichols' prosecution cost millions, even though the jury convicted Nichols on all 54 counts, even though the judge imposed the maximum punishment short of death, and even though Nichols will spend the rest of his life miserably confined in a maximum-security prison, Howard's death penalty fixation deludes him into thinking that executing Nichols is so desirable that taxpayers should fund, and that witnesses, jurors and court personnel should be subjected to, a second capital trial.

Even if Nichols was tried in federal court, there is no assurance that he would be convicted of the only arguably federal homicide he committed, the murder of off-duty U.S. Customs



► Donald Wilkes is a professor at the University of Georgia School of Law.

Agent David Wilhelm, who was renovating his home in Buckhead when Nichols shot him. To convict Nichols of murdering Wilhelm, federal prosecutors would have to prove beyond a reasonable doubt that Wilhelm was killed while engaged in or on account of the performance of his official duties. This would be difficult, as several former federal prosecutors recently announced.

Even if Nichols was convicted in federal court of murdering Wilhelm, there is no guarantee that he would receive a death sentence. Under the federal death penalty statute, as under Georgia statutes, a death sentence is barred unless the jury unanimously finds one or more aggravating factors and also unanimously recommends a death sentence.

Like the state jury, the federal jury would be selected from Fulton County, one of the least death-penalty-friendly areas of Georgia, and it is reasonable to believe that, as was true of the state jury, one or more of the federal jurors might hesitate to order a fellow human being executed — especially now that the murderer is already imprisoned for life without parole.

And even if Nichols was sentenced to death in federal

court, there would be appeals and possibly another trial or proceedings that might result in a reduction of the sentence, all of which would consume still more time, money and resources.

Furthermore, internal guidelines of the U.S. Department of Justice forbid a federal prosecution of Nichols for murdering agent Wilhelm. Under these regulations, a federal criminal prosecution, following a prior state prosecution for substantially the same acts or transactions, is prohibited.

If the state prosecution has resulted in a conviction, the only exception to the policy is where the state sentence was "manifestly inadequate." Nichols has been sentenced by the state court to life without parole for murdering Wilhelm, and it is folly to deem that sentence manifestly inadequate.

Paul Howard has repeatedly exercised poor judgment in the Brian Nichols case. He refused Nichols' offer to plead guilty in return for a sentence of life without parole. He wasted about \$3 million futilely trying to get a death sentence in a county whose citizens are wary of this uncivilized sanction. His prosecution witness lists were document dumps that forced Nichols' attorneys to prepare for testimony of hundreds of people.

Now, taking it upon himself to arrange a federal prosecution of Nichols, Howard's judgment has devolved from doubtful to doltish.

## READERS WRITE

### City would be soulless without fine arts

As Michael Kaiser so eloquently noted, American arts organizations are fragile ("Arts organizations suffer silently sans bailout dollars," @issue, Jan. 1). As exemplified by the enormous growth of the Midtown area surrounding the Woodruff Arts Center, arts "hubs" generate economic activity in this city. Similarly, the new suburban arts hubs — Cobb Energy Center and Verizon Wireless Amphitheatre — will be economic stimuli for their areas, increasing property values, enhancing quality of life and prompting growth.

Atlanta's "soul" would be much depleted without the arts organizations that enliven the metropolitan area. Even in these dire times, attending a live performance or visiting a museum can do much to heal the woes of a worried population. I encourage Atlantans to patronize and support, however minimally, the arts organizations of this city so that when times are better, we can all still benefit from the diverse, creative and inspired spirit that arts organizations bring to the Atlanta community.

DENNIS HANTHORN

Hanthorn is general director of the Atlanta Opera.

### Pedestrian overpasses could prevent deaths

How many more of our children have to die before our local governments get it? Nobody should die crossing the street. I am so tired of hearing the same "tsk, tsk" about sidewalks, pedestrian islands and more lights with crosswalks.

Just build pedestrian overpasses on major thoroughfares with high-volume pedestrian traffic: Buford Highway, South Cobb Drive, Old National Highway and others. This seems like a no-brainer to me.

LISA MCKNIGHT  
Union City

### Prize means bigger bets, higher stakes

The Georgia Lottery recently presented a winner with \$5 million. I'm sure the probability of a gigantic win will cause more players to bet even more than usual. However, persons with limited income will lose proportionally more to the Georgia Lottery than will affluent players because they bet a greater percentage of their income. Very few limited-income players have any idea of their remote chance of winning an appreciable amount of money.

In the face of limiting expenditures because of declining tax and other income receipts, the state has had to release some employees and take other actions to meet the fiscal budget. But this restraint didn't reach the director of the lottery, who had a yearly salary of \$286,000 and received an additional \$150,000 bonus.

RICHARD H. KICKLIGHTER  
Conyers