

# **THERE SHOULD BE NO FEDERAL PROSECUTION OF BRIAN NICHOLS**

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One hour after Brian Nichols was sentenced in Fulton Superior Court to serve, consecutively, four life sentences without possibility of parole, seven life sentences paroleable after 30 years, and additional sentences of imprisonment totaling 485 years, 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 confined miserably 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 witnesses, jurors, and court personnel 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 homicidal crime he committed, that of off-duty U.S. customs 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 around \$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.