



**President**

Theodore Simon Philadelphia, PA

**President-Elect**

E. G. Morris Austin, TX

**First Vice President**

Barry J. Pollack Washington, DC

**Second Vice President**

Rick Jones New York, NY

**Secretary**

Drew Findling Atlanta, GA

**Immediate Past President**

Jerry J. Cox Mount Vernon, KY

**Parliamentarian**

Nina J. Ginsberg Alexandria, VA

**Directors**

Christopher W. Adams Charleston, SC

Daniel N. Arshack New York, NY

Brian H. Bieber Miami, FL

Andrew S. Birrell Minneapolis, MN

Susan K. Bozorgi Miami, FL

Ellen C. Brotman Philadelphia, PA

Alexander Bunin Houston, TX

Jean-Jacques Cabou Phoenix, AZ

Maureen A. Cain Denver, CO

Aric M. Cramer Sr. Saint George, UT

Candace Crouse Cincinnati, OH

Ramon de la Cabada Miami, FL

Nicole DeBorde Houston, TX

Marissa L. Elkins Northampton, MA

Michael P. Heiskell Fort Worth, TX

Paula Rhea Henderson Knoxville, TN

Bonnie Hoffman Leesburg, VA

Stephen Ross Johnson Knoxville, TN

Ashish S. Joshi Ann Arbor, MI

Elizabeth Kelley Spokane, WA

Nellie L. King West Palm Beach, FL

Benjamin R. LaBranche Baton Rouge, LA

Tyrone C. Monciffe Houston, TX

Norman R. Mueller Denver, CO

Melinda M. Sarafa New York, NY

Kristina W. Supler Cleveland, OH

Jeffrey E. Thoma Fairfield, CA

Robert S. Toale Gretna, LA

CeCelia E. Valentine Phoenix, AZ

Deja Vishny Milwaukee, WI

Christopher A. Wellborn Rock Hill, SC

Steven M. Wells Anchorage, AK

Christie N. Williams Austin, TX

William P. Wolf Chicago, IL

**Executive Director**

Norman L. Reimer Washington, DC

March 19, 2015

Governor Gary Herbert  
350 North State Street  
Suite 200  
P.O. Box 142220  
Salt Lake City, Utah 84114-2200

Dear Governor Herbert,

On behalf of the members of the National Association of Criminal Defense Lawyers (NACDL), we write to urge you to veto House Bill 11 that would amend Utah's death penalty statute to reinstate executions by firing squad.

NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's approximately 9,500 direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.

NACDL opposes the imposition of capital punishment in all circumstances. But to the extent that the practice continues in the United States, we have grave concerns about this Bill.

In 2004, after careful deliberation, Utah commendably abolished the use of the firing squad in executions, thereby joining 36 other death penalty states and the federal government in rejecting this outdated and widely condemned mode of execution. Reinstatement of executions by firing squad would constitute an embarrassing step backward that would adversely affect Utah's reputation for moral leadership by providing for a mode of punishment that is almost universally rejected in the United States and throughout the world.

Over the course of the past century, a national consensus has evolved against imposition of the death penalty by firing squad in the United States. Nevada is the only state other than Utah to have ever used the firing squad, and the last (and only) execution ever carried out in Nevada by firing squad was in 1913. Oklahoma is currently the only other state with laws permitting execution by firing squad, but would do so only in the event that lethal injection is deemed unconstitutional. Moreover, executions by firing squad are an exceptionally uncommon phenomenon in the "modern era" of the death penalty in the United States, since 1976. Of the 1,404 executions carried out in the United States over the last 40 years, only three have been carried out by firing squad. The overwhelming consensus against execution by firing squad demonstrates that this practice is inconsistent with the "evolving standards of decency that mark the progress of a maturing society," and therefore is unconstitutional under the Eighth Amendment.

As in the United States, the clear international trend has been away from execution by firing squad. No other Western industrialized nation in the world permits execution by firing squad. Among those nations that retain capital punishment, execution by firing squad is becoming increasingly uncommon. Guatemala abandoned the firing squad in 1997, as did Thailand in 2003. Vietnam has signaled that it will seek other methods of execution, calling the firing squad "appalling" and "no longer suitable." Indeed, even China, which carries out more executions than any other nation in the world, has recently begun moving away from the firing squad and toward lethal injection in pursuit of a more "civilized, humane, and scientific manner of death." These international developments reflect a worldwide recognition that execution by firing squad is fundamentally inconsistent with contemporary standards of decency.

Finally, to pass constitutional muster, a method of execution must not be designed to inflict unnecessary pain. The potential for a painful death occurring by firing squad is obvious. Although the condemned individual usually wears a target designed to aid the shooters in locating the heart, there is a substantial risk that the shooters will miss the target and hit other parts of the person's body, leading to a slow and excruciating death. In short, there is no guarantee that an inmate will be immediately killed or rendered unconscious before experiencing pain from the bullets that enter parts of his or her body other than the heart.

We strongly urge you to veto House Bill 11 and to preserve Utah's standing as a moral leader.

Respectfully,

  
Theodore Simon