Not Another Death Penalty
Steve Gottlieb

The Governor and many Republicans have reacted to the death of a policeman by proposing to reinstate the death penalty. In doing so they renew a seemingly endless argument. To many of us, the death penalty seems useless, unable to deter anyone and likely to be executed on the wrong people. But proponents persist. We are told to support our police, our sheriffs, and our state troopers.

Listeners should know that I have been active in the Civil Liberties Union and President of the local Chapter. To me, security is a civil liberty. Some will remember that freedom from fear was a part of our World War II propaganda and became part of our postwar effort. Norman Rockwell painted the iconic Four Freedoms posters. For Freedom from Fear he painted parents putting their child to bed. Security is crucial to us all, for ourselves, our parents, spouses and children.

But I have also looked at some of the evidence on the death penalty. The claim that the death penalty deters anyone is pure fantasy. The claim that killers stop to consider whether they will spend their lives in prison or suffer the death penalty is nonsense. There are plenty of murders in the states with the toughest penalties.

The demand for the death penalty is symbolic, a form of trying to honor people who are beyond appreciating it, and to salve the pain of those bereft.

Symbols matter. They are comforting. But this one is costly. As an attorney I also know that our system of justice is far from reliable, especially in the highest profile cases, the ones that carry the death penalty. The large number of people who have been exonerated as the result of DNA evidence is only the tip of the iceberg. They are evidence of all the things that go wrong in murder trials. And those things go wrong whether or not DNA is available.
They've gone wrong before. Early in the twentieth century lawyers were writing treatises describing the miscarriages of justice that took place, the innocent people who were executed. Their objections were part of the reason that we virtually stopped executing people in mid-century. But once we stopped, people forgot. And when we started executions again, the problems resurfaced. It seems like a hard lesson to learn.

Some people don't seem to care. Not long ago, the Court decided that a death row inmate deserved some relief because DNA evidence showed that the evidence used to convict was wrong. But Chief Justice Roberts, joined by Justices Scalia and Thomas, dissented, saying the weakness of the prosecution's case didn't matter because the defendant couldn't prove his innocence beyond a shadow of a doubt. Of course that is precisely the reverse of the standard we use to convict, let alone put someone on death row.

But that's the point. The death penalty makes some folk so bloodthirsty, they can't stop to notice they've got the wrong guy.

Steve Gottlieb is Professor of Law at Albany Law School and author of *Morality Imposed: The Rehnquist Court and Liberty in America*. He is also a member of the Board of the New York Civil Liberties Union and served in the US Peace Corps in Iran.