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There appears to be some confusion about innocence and the death penalty.  
Hopefully, this will be of some assistance.

"Defining innocence"

The Record (Bergen County, NJ.)  
Sunday, November 21, 1999

There appears to be a significant misinterpretation in "Last hope for=20  
the unfairly convicted," Page A-1, Nov. 14).

It says, "Since the U.S. Supreme Court reinstated the death penalty in=20  
1976, 82 death-row inmates have been exonerated, or one for every seven who=20  
were executed." Most people, I believe, would understand exonerate to mean=20  
that there was a finding that the persons didn't commit the murder they were=  
=20  
sentenced to die for. In that context, the statement is simply not true.=20

A brief review of the methodology used to determine innocence reveals=20  
that such cases include both the factually innocent, the "he didn't do=20  
it" cases, as well as those only legally innocent. This means there is=20  
no assumption of "he didn't do it," but there is a release from death=20  
row, via appeal, which may result in no new trial or a retrial with a=20  
not guilty verdict. Big difference. How all such cases become factually=20  
innocent in the media is a mystery.

The anti-death penalty Death Penalty Information Center keeps track of=20  
these cases and gives a brief case description at its Web site. DPIC's=20  
case descriptions reveal that only about 25 claim factual innocence,=20  
with the necessary evidence to back up that assertion. One would assume that=  
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the DPIC would make a presentation reflecting the best available cases and i=  
n=20  
the best possible light.

Northwestern University Professor Lawrence Marshall, who organized the=20  
Wrongfully Convicted on Death Row Conference in Chicago in November 1998=20  
finds that "in a good half of these 75 [now 82] cases, the exoneration is so=  
=20  
complete that it erases any doubt whatsoever." Of course, Marshall's claims=20  
include the understood revelation that there are doubts regarding innocence=20  
in the other 40 or so cases. This would=20  
appear relevant to any exoneration claims.

For some reason, The Record does what all the anti-death penalty groups do:=20  
It compares the number of "exonerated" with the number executed, finding tha=  
t=20  
there has been "one [exonerated] for every seven who were executed." True=20  
enough, but as we are dealing with alleged wrongful convictions, not=20  
executions, the proper set to compare them to would be all convictions.=20

Let's generously assume that there is clear and convincing evidence that 40=20  
factually innocent inmates have been released from death row. That represent=  
s=20  
0.6 percent of the approximately 6,500 sentenced to death row since 1973. Is=  
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there any other criminal sanction, anywhere in the world, that can show 99.4=  
=20  
percent factual guilt accuracy, after 26 years of critical review, by=20  
opponents of that sanction, wherein all those=20  
"innocent" imprisoned have been released? Unlikely.

Dudley Sharp, Houston, Texas, Nov. 18

The writer is vice president for Justice For All, a Texas-based criminal=20  
justice reform organization.

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