Robert Brett Dunham
EXECUTIVE DIRECTOR

1701 K Street, N.W.
Suite 205
Washington, D.C. 20006
(202) 289-2275
dpic@deathpenaltyinfo.org
www.deathpenaltyinfo.org

DEATH PENALTY INFORMATION CENTER

FOR IMMEDIATE RELEASE

STATEMENT BY DEATH PENALTY INFORMATION CENTER EXECUTIVE DIRECTOR ROBERT DUNHAM REGARDING THE DEATH OF EXONEREE HAROLD WILSON

May 28, 2019

On Saturday, May 18, my friend and former client, Philadelphia death-row exoneree Harold Wilson, died at Inova Fairfax Hospital in Virginia. That morning, his family made the difficult decision to ask doctors to take Harold off the ventilator that had been keeping him alive. Harold had suffered a series of strokes that were further complicated by pneumonia. His risk of stroke and the complications that followed had been worsened by the Posttraumatic Stress Disorder he developed as a result of the 17 years he faced the death penalty, most in solitary confinement on death row.

Harold was sentenced to death in October 1989 for a triple murder in a Philadelphia crack house. His court-appointed lawyer did virtually no investigation and presented a paltry case for life in the penalty phase.

On June 17, 1996, Pennsylvania Governor Thomas Ridge signed a death warrant scheduling Harold's execution for July 11. At that time, I was Executive Director of the Pennsylvania Capital Case Resource Center. We obtained a stay of execution for Harold on July 3 and began the long process of first overturning his death sentence and then getting him a new trial.

On April 1, 1997, Philadelphia District Attorney Lynne Abraham disclosed the existence of a videotape of an internal jury selection training featuring Harold's prosecutor, Jack McMahon, who was running against her for District Attorney. The videotape described techniques to exclude African Americans from jury service. In the news conference in which she released the tape, Abraham called the jury selection practices it espoused unethical and anathema to the values of the American jury system. We amended the jury discrimination claim in Harold's post-conviction petition to include the statements made by McMahon in the videotape and by Abraham in denouncing the tape. It was the first case in which a death-row prisoner used the training tape as evidence that he should be provided a new, fair trial. Despite its public pronouncements about the tape, the Philadelphia D.A.'s office opposed Harold's petition.

We later amended Harold's jury discrimination claim based on a study by Professor David Baldus that documented 14,000 strikes and acceptances of jurors by the Philadelphia District Attorney's Office in death penalty cases prosecuted over a 20-year period. The

Board of Directors
Anthony Amsterdam | David J. Bradford | David Bruck | Deborah W. Denno | James W. Ellis | Phoebe C. Ellsworth | Brandon L. Garrett | George H. Kendall | John R. MacArthur | Mark Olive | Diann Rust-Tierney | Cassandra Stubbs | Ronald J. Tabak

study showed that Philadelphia prosecutors struck black jurors at twice the rate of other jurors and struck white jurors who lived in integrated neighborhoods with twice the frequency of white jurors who lived in highly segregated white neighborhoods.

In Harold's case, we were able to demonstrate a pattern of discriminatory strikes over the course of more than 20 trials prosecuted by Mr. McMahon. A statistical analysis of the strikes placed the probability that this pattern of racially disparate strikes was a product of chance at one in a quadrillion. That is, we explained to the judge, one in 999 trillion, 999 billion, 999 million, 999 thousand, 999 plus 1.

Initially, the trial court dismissed Harold's jury discrimination claim on the grounds that it had been "previously litigated" on direct appeal (without the McMahon tape or the statistical evidence). The court granted us an evidentiary hearing challenging Harold's death sentence, but did not allow us to present evidence challenging his conviction. On August 19, 1999, the court overturned Harold's death sentence ruling that his lawyer's near total failure to conduct a mitigation investigation violated Harold's right to effective assistance of counsel.

We appealed the denial of an evidentiary hearing on the jury discrimination claim and the Pennsylvania Supreme Court returned the case to the trial court for a hearing on that claim. After hearing testimony from Mr. McMahon, the trial court granted Harold a new trial on January 17, 2003, finding that the prosecution had discriminatorily excluded African Americans from serving on the jury.

Harold was represented by the Defender Association of Philadelphia's homicide unit on retrial. His lawyers persuaded the court to bar the death penalty on retrial because important mitigation witnesses had died, important records had been destroyed, and important mitigating evidence had become unavailable in the years since Harold had first been charged, and that the passage of time that caused this evidence to be lost was directly attributable to deliberate prosecutorial misconduct.

In preparing for the retrial, prosecutors had the killer's jacket tested for DNA, hoping to directly tie Harold to the killings. The results were dramatic: according to the state's own expert, the jacket had blood from four people — the three victims and an unidentified person who was not one of the victims and was not Harold. The DA's office retried Harold anyway.

The first retrial ended in a mistrial when prosecutors left gruesome and inflammatory crime-scene photos on the bar of the jury box in clear view of the jurors. On retrial, on November 15, 2005, Harold was acquitted. He became the 122nd wrongfully convicted and death sentenced person in the United States to be exonerated since the U.S. Supreme Court's decision in *Furman v. Georgia* in 1972.

At that time, DPIC's Executive Director Richard Dieter said: "This case is further evidence that the death penalty risks executing innocent people. Fortunately, Wilson had

the advantage of DNA evidence and expert lawyers the second time around. Otherwise, he might be dead today. As the nation faces the 1000th execution since the death penalty was reinstated, it is imperative that this whole process be re-evaluated."

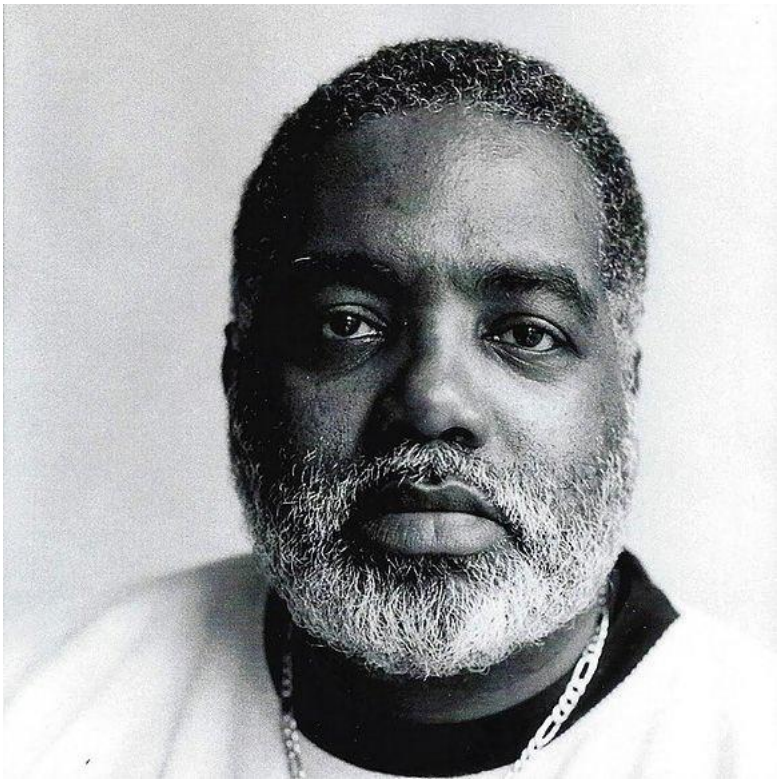
Fourteen years later, the U.S. is approaching its 1500th execution. In the time it has taken to close in on that landmark, there have been another 43 exonerations. And the death of this wonderful, gentle man is another reminder of the lifetimes that have been lost and the lives that have been destroyed by a broken policy that, as currently administered, has proven itself incapable of reliably distinguishing between the innocent and the guilty or of eliminating arbitrary factors such as race, geography, and poverty from the calculus of who lives and who is sentenced to die.

Harold received no compensation from the Commonwealth of Pennsylvania for the time he was wrongly incarcerated on death row. In the years since his exoneration, he was active with Witness to Innocence, speaking out against the injustices that wrongly sent him and others to death row and advocating for the abolition of a policy that he believed was fatally flawed, irredeemably unfair, and immoral. He brought that message powerfully to the world and it is a message he told me he wanted others to continue to shout from the rooftops.

Those of us who knew and loved Harold are heartbroken by his death.

Rest with the angels, my friend, and rest in peace.

— Robert Dunham



Photographs: 1. preceding page, Harold Wilson speaking at DPIC Executive Director Robert Dunham's wedding; 2. above, with Witness to Innocence co-founder Ray Krone at a rally in Philadelphia in 2007; 3. left, portrait courtesy of Witness to Innocence.