



## NEWS

## Federal Judge Orders Alameda County District Attorney to Review 35 Capital Cases Following Disclosure of Prosecutorial Misconduct in Jury Selection

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*Alameda County Court House*

On April 22, 2024, Alameda County District Attorney Pamela Price announced that her office was ordered by a federal judge to review 35 death penalty convictions after the disclosure of evidence that several prosecutors intentionally excluded Black and Jewish people from serving on a capital murder trial in 1995. In a press conference, DA Price indicated that her office discovered the handwritten notes of former prosecutors that include discriminatory jury selection tactics, suggesting “serious misconduct” permeated the office in the 1990s. “It’s not limited to one or two prosecutors, but a variety of prosecutors,” DA Price said. “The evidence that we have uncovered suggests plainly that people did not receive a fair trial in Alameda County and as a result, we have to review all the files.” U.S. District Court Judge Vince Chhabria ordered that the notes be made public following their discovery in the case of Earnest Dykes, who was convicted and sentenced to death for the 1993 attempted robbery of an elderly woman and the murder of her 9-year-old grandson. Judge Chhabria wrote that these notes, “especially when considered in conjunction with evidence presented in other cases – constitute strong evidence that, in prior decades, prosecutors from the office were engaged in a pattern of serious misconduct, automatically excluding Jewish and African American jurors in death penalty cases.”

DA Price’s office released excerpts of the prosecutors’ notes, including one involving a Black female juror, where the unnamed prosecutor wrote, “Says race is no issue, but I don’t believe her.” In a separate note regarding another Black female juror, a prosecutor described her as “short, fat, troll,” and that she “seemed put out by? my [questions] about the [death penalty] – tried to avoid giving direct answer [sic] a lot of ‘I don’t knows’ – don’t believe she could vote [death penalty].” Additional notes released by the district attorney’s office indicate that prosecutors placed emphasis on jurors’ Jewish identities, specifically underlining the word ‘Jewish’ and noting another juror’s profession as a banker and questioning his religion. The prosecutor’s notes are followed by “nice guy – thoughtful but never a strong [death penalty] leader – Jewish background.” Brian Pomerantz, an attorney for Mr. Dykes, praised DA Price’s office for releasing these notes. “It is overwhelming for Mr. Dykes to learn that this kind of misconduct and prejudice was happening in his case. After 31 years in prison, he’s learning he didn’t get the fair trial he should have gotten. He’s always thought this... but to hear the DA’s office saying it themselves is profound.”

During the press conference following Judge Chhabria’s order, DA Price said that her decision to review all 35 cases not only stems from the judicial ruling, but also an ethical responsibility. “This is not about left or right or any kind of politics,” said DA Price. “This is about ethics.” In a statement, Senior Director of Color Of Change Michael Collins said that this information “is horrifying. We have known for a long time that prosecutors often engage in unethical practices, but this scandal, uncovered by DA Pamela Price, is unparalleled.” He continues that “for too long, prosecutors have sought to win at all costs, even if it means engaging in constitutional violations, civil rights violations and antisemitic and racially disparate practices that result in people sentenced to death.”

The Alameda County DA’s office started their review process about a month before the federal order and have been in contact with victims and survivors in the affected cases. “We recognize how terrible this is, and it is something we have to make right,” DA Price said. She added that “it’s outrageous. When you have this kind of misconduct, it impacts them first and foremost because have been misled... We have to be mindful of the impact that this has on them and address their needs as well as balancing the right of every defendant to a fair trial.”

DA Price’s review comes just a few weeks after a group of legal advocates, including the Office of the State Public Defender and Color Of Change, asked the California Supreme Court to “bar the prosecution, imposition and execution of death sentences” because of its disproportionate use on people of color. The court filings indicate that Black defendants are approximately nine times more likely to be sentenced to death in California than all other races. Additionally, neighboring Santa Clara County District Attorney Jeff Rosen recently announced that he would seek to resentencing 15 men sentenced to death in Santa Clara to life sentences without the possibility of parole.

DA Rosen cited the “diminishing likelihood” or any executions in California because of Governor Gavin Newsom’s 2019 moratorium on the death penalty. “The state is dismantling death row, and it is time we recognize this reality and dismantle these sentences as well,” said DA Rosen in a resentencing motion. Despite Gov. Newsom’s moratorium, nearly 700 prisoners remain on death row. California’s last execution took place in 2006.

## TAGS

📌 Pamela Price    📌 Alameda County, California    📌 Jeff Rosen    📌 Gavin Newsom

## SOURCES

Salvador Hernandez, *Federal judge orders Alameda County to review death penalty cases*, Los Angeles Times, April 23, 2024; Annelise Finney, *Allegations of Prosecutorial Bias Spark Review of Death Penalty Convictions in Alameda County*, KQED, April 22, 2024; Sam Levin, *California county to review 35 death penalty cases after judge cites ‘pattern of misconduct,’* The Guardian, April 22, 2024.

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