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PERSPECTIVE

Two wrongs don't make a right but do stoke the fire behind the effort to recall DA Pamela Price

By K. Chike Odiwe

Alameda County District Attorney Pamela Price (Price) has placed all 35 of her county's death sentences on hold. Price noted the discovery of evidence that prosecutors in a 30-year-old case had removed all Jewish and Black people from the jury.

Price noted at a news conference that the Equal Protection Clause prohibits a prosecutor from excluding a potential juror based on their race, religion, gender, or any protected class. *Batson v. Kentucky* 476 U.S. 79 (1986). Price said at the conference that her office collected evidence that suggests that many people did not receive a fair trial in Alameda County because of a pattern of prosecutorial misconduct in the discriminatory exclusion of potential jurors.

Price cited the Ernest Dykes (Dykes) case. Dykes was convicted in 1993 of murdering his landlady's 9-year-old grandson, Lance Clark, and trying to murder landlady Bernice Clark during an attempted robbery. In Dykes' case, the prosecutors excluded potential jurors solely based on their race. Price said that her office had evidence that the same discriminatory conduct took place in several cases and was not limited to one or two prosecutors.

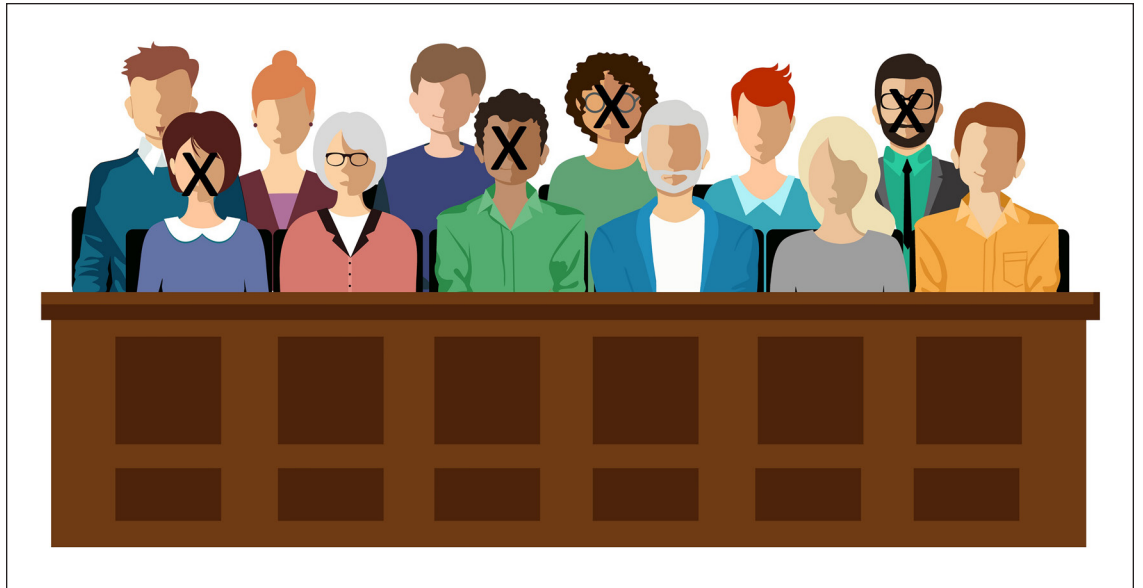
In *Berger v. United States* 295 U.S. 78 (1935), the Supreme Court emphasized that the government's interest in a criminal prosecution

is not to win a case, but to see that justice is done, and that it is a prosecutor's duty to refrain from improper methods aimed to produce an unfair trial and wrongful conviction as it is to use every legitimate means to bring about a just outcome.

The duty of prosecutors described in *Berger* establishes the basis for courts to assert that it is prosecutorial misconduct when the government crosses the line between proper and improper methods. The misconduct label can be attached to as broad a range of acts as the prosecutor has authority to perform because the admonition to ensure justice is tied to every action of the prosecutor. Since *Berger*, courts have used the misconduct label as a tool to describe whether the

government attorney acted outside the bounds of their duty as an advocate.

U.S. District Judge Vince Chhabria (Judge Chhabria) of San Francisco is hearing Dykes' federal appeal after the state Supreme Court upheld his convictions and death sentence. Judge Chhabria said Price's office had shown him and Dykes' lawyers notes from jury selection from the prosecutors at Dykes' trial. Judge Chhabria believed that the notes were strong evidence that in prior decades, prosecutors from the Alameda County District Attorney's Office were engaged in a pattern of serious misconduct, automatically excluding Jewish and African American jurors in death penalty cases.



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K. Chike Odiwe is a civil rights attorney at Burris Nisenbaum Curry & Lacy.



Tom Orloff, who served as Alameda County District Attorney (District Attorney) from 1995 until he retired in 2009, said that he was unfamiliar with the details of Dykes' case. Still, Orloff stated firmly that Price did not need to put all 35 death sentences on hold. "There is a whole legal process for assessing those issues, which she apparently wishes to ignore," Orloff said, referring to post-appellate review in habeas corpus proceedings.

Price has come under routine scrutiny during her time as District Attorney. Price, a former civil rights lawyer, took office in 2023 after a campaign in which she promised not to seek the death penalty or other sentences that she believed were unjust. Price made a bold move by placing a hold on all 35 of Alameda county's death sentences. Opponents of Price are skeptical as to whether there is sufficient evidence to warrant a

hold on all the county's death sentences. Many opponents have accused Price of being soft on crime. In response to the crime narrative, Price says "there is obviously no place where racism has been so accepted than in the criminal justice system," Price said. "When we talk about crime in America — for decades, if not centuries — crime has been a euphemism for race. And to be afraid of crime is synonymous often for many people with being afraid of Black people or being afraid of brown people," Price said in response to opponents.

Price's decision to place the county's death sentences on hold is an aggressive attempt to rectify the consequences of racial bias in the application of the death penalty. Price has targeted the District Attorney's practice in prior decades in which they automatically excluded Jewish and Black jurors because of the historical bias that

members of said groups would not favor the death penalty. The automatic exclusion of Jewish and Black jurors is prosecutorial misconduct because the prosecutor has operated from a position of bias with the intent to compose a jury that would favor capital punishment.

Save Alameda for Everyone (SAFE) is a committee formed to recall Price. SAFE began their recall effort months after Price became the District Attorney. SAFE wants to recall Price because they claim that her reform policies have driven crime in the county. The Alameda County Registrar of Voters has already announced that SAFE's recall campaign against Price submitted enough valid signatures to qualify for an election. Price's legal team is prepared to argue that the recall attempt is invalid because SAFE has not complied with the applicable law to hold an election.

Given the public uncertainty surrounding the scope of the evidence that Price used to justify placing all the county's death sentences on hold, it is likely that her critics will intensify their recall efforts. Families and victims of violent crime have alleged that Price appears to be too sympathetic to people convicted of serious crimes. SAFE believes that Price's policies encourage crime. The notion of the soft-on-crime narrative is the assertion that it is not racist to want to be safe from crime. It is apparent that Price will continue to face such challenges throughout her time as District Attorney.

Price's decision to place Alameda County's death sentences on hold makes it clear that even in the face of the mounting criticism and recall efforts, she remains steadfast in her reform policies and efforts to challenge racial bias in the criminal justice process.