

**Greater Rockridge  
Neighborhood Crime Prevention Council (12Y/13X) – Minutes  
Thursday, August 13, 2020  
Virtual Meeting via Zoom  
General Public: 7:00-8:30 PM**

**Neighborhood Crime Prevention Council (NCPC):**

Michael Ubell – Chair  
Jon Travis - Interim Vice Chair  
Eric Neville - Treasurer  
Karen Ivy – Secretary & Information Officer  
Angela Moore – Neighborhood Services Coordinator  
Officer Josiah Ladd – Community Resource Officer, beat 12Y  
Officer Kristine Jurgens-Duenas - Community Resource Officer, beat 13X

**Introductions**

Mike Ubell opened the meeting at 7:04 PM. 20 people attended. He introduced the 2 Community Resource Officers. We have 2 guests who will speak later: Terry Wiley, Assistant District Attorney, and William Locke, retired Public Defender, both from Alameda County.

**Oakland Police Dept. (OPD) Status Reports, beats 12Y and 13X, and neighborhood discussion**

**Beat 12Y – Officer Josiah Ladd**

Officer Ladd commented that crime statistics have shown very little crime. The last 60 days saw zero carjackings, for instance. This is mostly due to COVID-19, we expect it to increase as and when the area reopens.

<b>Beat 12Y</b>		
<b>Crimes</b>	<b>6/12/2020 – 8/11/2020</b>	<b>6/12/2019 – 8/11/2019</b>
Robbery Firearm	0	4
Robbery Strongarm	2	6
Carjacking	0	0
Auto Burglary	20	76
Residential Burglary	8	14
Commercial Burglary	5	8

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<https://RockridgeNCPC.com> & <https://www.oaklandca.gov/departments/police>

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There have been car break ins up by Joaquin Miller Park where people park to hike. Be vigilant as restaurants reopen and people park on the street, warn people to watch out.

Officer Ladd reported on our priority, Melvin, the homeless man at 63<sup>rd</sup> & College. Melvin has been there most of a year, Officer Ladd gets lots of emails from residents and businesses in the area, he's been there and talked to everyone. Alameda County Mental Health says Melvin's behavior issues are not mental health related. They've tried to refer him to help, such as the City of Oakland homeless outreach task force, the Homeless Action Center, County of Alameda Social Services, Alameda County Mental Health. Melvin refuses the offers. Officer Ladd has talked to an assistant D.A. to push through a misdemeanor battery charge, but the courts are currently not in session, they say wait for a mailing. Melvin won't get mail, so Officer Ladd will have to make sure he gets to his court date. Officer Ladd has put together a list: from January 2020 to date roughly 60 incidents were reported on Melvin, from area residents and people going to businesses. At least 5 reports since January 2019 have involved some kind of vandalism. Officer Ladd will try to work with businesses and residents to file for a restraining order; it's all we can do unless Melvin actually commits a crime.

*Mike Ubell:* Will you do the paperwork for the restraining order?

*Officer Ladd:* I'll meet with the residents at their weekly Zoom meeting.

*Mike Ubell:* Any questions for Officer Ladd?

*Officer Ladd:* I'll put my email in the chat box.

*Terry Wiley:* Does he have mental issues?

*Officer Ladd:* Mental health says he's behavioral, he can't be put in psychiatric care.

*Terry Wiley –* The DA's office is now working very closely on behavioral and mental health issues. You should bring this to the attention of Assistant D.A. L. D. Louis, maybe she can handle it outside a criminal prosecution. Melvin wouldn't remain in custody very long.

### **Beat 13X – Officer Kristine Jurgens-Duenas**

The crime statistics for 13X are very boring. Temescal is usually a hot spot for auto break ins. In the last 60 days there were zero robberies, 5 residential burglaries, 5 grand thefts, and 7 petty thefts. We've had no complaints for 30 days. There were no shootings, stabbings, or felony assaults. Any questions?

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<b>Beat 13X</b>		
<b>Crimes</b>	<b>6/12/2020 – 8/11/2020</b>	<b>6/12/2019 – 8/11/2019</b>
Robbery	0	1
Auto Burglary	2	5
Residential Burglary	5	4
Grand theft	5	5
Petty theft	7	2

**After the Arrest, by Terry Wiley, Assistant District Attorney, County of Alameda**

Mike Ubell introduced Assistant D.A. Terry Wiley and explained that we are often asked why arrested people are back on the street committing crimes again, so soon. We'd like to know what happens in the D.A.'s office after the case is received from the police. Terry Wiley has been with District Attorney's office for 30 years, starting as a Deputy D.A. Deputy D.A.s try cases, then move into different assignments like domestic violence, sexual assaults, or general felonies. He's been mostly in general felonies. Since a promotion, he's now an administrator who manages the Wiley Manuel Courthouse. He supervises 6 charging deputies, mostly at with least 15 years' experience. Alameda is a big county. The judicial district now covers Oakland, Berkeley, and Piedmont. It also used to cover Hayward, San Leandro, and San Lorenzo, but those are now handled in the east county. Melissa Dooher is a fulltime D.A. at police headquarters. She mainly handles homicides, but she covers other cases when there are no homicides. We have a D.A. that only does gun cases. All violent cases come to Wiley Manual Courthouse for charging.

For example - someone commits an auto burglary, and a citizen gets a description. The police try to find a suspect, they detain someone who looks like the description, then they ask the citizen what was stolen, and check whether the suspect has any of the stolen stuff. If he does, the officer writes a report, which must be approved. After approval, the report goes to the complaint unit, which logs all cases which come into the D.A.'s office. Auto burglaries in Oakland would go to Teresa Ortega.

After an arrest, the D.A. in charge of the case has 48 hours to file a complaint and arraign the suspect. In that time, the D.A. has to review the case and decide whether to charge. Can anyone identify the suspect? Can you

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prove it without the witness? (6 months later at trial the witness may not remember.) Ask the witness what he told the police. Ask the officer what happened. Can the victim identify the stolen goods? If all those elements are there, the case is charged.

Arraignment happens the same day, especially if the suspect is still in custody. He'll be assigned a Public Defender if he can't afford one. A Public Defender will interview the suspect, Mr. Locke can tell you about that. Arraignment means *reading the charges*. The Public Defender may waive reading the charges and plead – usually not guilty.

How do people commit crimes and then appear back out on the street? Pre-COVID-19, this didn't happen as much, but it does happen. Property crimes cause distress. Mr. Wiley reported having had his own car burgled. Having your car burgled makes you feel violated; you want to see something done. Under COVID-19, people are let out of custody if possible – there's an outbreak of COVID-19 at Santa Rita jail and the numbers are rising slowly every week. A couple of deputy sheriffs passed last week from COVID-19. Also, the courts have been closed since March 18 or 19. They thought the courts could open in July – now it looks like they won't open this year. So they can't hold trials and do normal processing. The process is slowed.

Some people get out of custody by paying bail. If they're charged with a serious offense, the person has to be arraigned right away, but if it's a minor property crime, the arraignment may be delayed a couple of weeks.

We're trying to do some reforms to the criminal justice system which would impact operations. Any questions?

*Mike Ubell:* Pre-COVID-19, how long did it take to get to trial for auto burglary?

*Terry Wiley:* That depends on whether it was charged as a misdemeanor or a felony. Felony charges take priority on the court calendar. It's normal to have 12 courts open, of which 7 are trying homicides. Auto burglaries and misdemeanor cases in general may take 30 to 90 days to charge. The statutory speedy trial rights provide that for in-custody misdemeanor cases, the D.A. has 30 days from the date of plea to bring the accused to trial. For felonies it's approximately 90 days. Most defendants who choose to go to trial waive these speedy trial rights to give their attorneys more time to prepare. These time limits have been temporarily relaxed by the Judicial Council for the pandemic.

Oakland has a heavy load of misdemeanor charges, causing people to sit in jail awaiting trial. Misdemeanors have fewer courts available for trials and as a result they take a longer time to get to trial, normally 90 to 120 days, assuming the defendant is out of custody and has waived time. If the defendant fails to waive time, the trial will occur within 30 days. Property crimes are given a lower priority and typically take longer to get to trial.

*Mike Ubell:* We sometimes hear that someone is picked up for a minor misdemeanor, breaking a window say – and it just isn't charged.

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*Terry Wiley:* In the 3 years I was in juvenile prosecution, the whole system changed. Prosecution of minor misdemeanors doesn't always make the community safer. They try to determine if a specific kid should be in criminal justice, or if we can prevent a repeat of the conduct and get him on a different road in another way. In hiring D.A.s, you look for life experience, and the ability to make judgments. We don't always handle those misdemeanor cases very well. We may make a determination not to charge, and then have trouble explaining it to victim; we don't always do it well. People don't want to see kids in the criminal justice system, but they don't want to be victimized again. D.A.s need better communications.

*Jon Travis:* I would love to see the studies you're talking about. Prosecuting kids doesn't make the community safer. People also feel different now about calling the police, they have emotional reactions. D.A.s can't be immune to those emotional reactions. How do we measure the effectiveness of the parts of the system? How likely is it that the cops will catch the crook? How likely is it the D.A. will charge? We're assuming there are more complaints than charges. Is there a way for citizens to look at the data?

*Terry Wiley:* That's a complicated question. You are right that current environment changes things. The George Lloyd case accelerated criminal justice reforms that were already under way. One reform was a much greater reliance on data. The communities in Alameda County are very different – the demographics are constantly changing around the county. Most D.A. offices can tell how many felonies were charged and so on – but they can't tell who was arrested in Oakland vs Hayward, so it's hard to track communities through the system and look for disparities.

Different areas have different data systems. Santa Clara County has a fabulous data system, largely because of good funding. Most Bay Area counties collect data, but some collect data some people think we shouldn't keep. Over the next 5 years most D.A.s will be more data driven than they are now.

### **After the Arrest, by William Locke, retired Public Defender, Alameda County**

William Locke noted that he has known Terry Wiley for many years, and opposed him in at least one felony trial. The Public Defender has a different perspective – recognizing and preventing crime. It's been said that a conservative is liberal who's been mugged. He's been a crime victim himself; nobody likes to be mugged or burglarized.

William Locke attended law school at Cal, and clerked for a judge. He started in Alameda Co. as a Public Defender. He spent some time in Britain where he practiced as a barrister, doing the same thing. Then he returned to the Alameda County Public Defender's Office, where he mostly worked on homicides. He acknowledged that his perspective is through the eyes of the defendant.

Data is important, we like to base our policies on facts. A lot of law enforcement offices don't want to keep or share data, it keeps them from operating the way they want. California is very good about data sharing, other

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states maybe not so much. Basing prosecutions and defenses in our criminal justice system on evidence is good. As with medicine, we should try to base what we do on what actually works.

We're told our justice system is based on trial by jury. In fact, the majority of criminal cases never go to trial – it's too expensive and cumbersome. We aren't willing to spend the money on jury trials. A system developed to pressure charged people to give up their rights, involving plea bargains at earliest possible stage. This is his own experience in Alameda County. The interests and values of the institutions of the criminal justice system shape the process in a way no individual could.

The clearest example is felonies. People are arrested. The bail system makes it really hard to get out of custody while awaiting trial. Typically, the D.A. brings charges, and offers the person a deal to get out of custody fast. The person gives up all their rights for 3 years of felony probation (formerly 5 years). Throughout, the criminal justice system depends on the discretion of the individuals who administer it. Probationers are subject to police discretion – for felony probationers the police have the discretion whether to warn them, cite them (requiring a later court appearance), or take them into custody. The D.A. charging deputies also have great discretion which they initially base on the police reports; the police reports are usually very brief in the first round (except for very serious cases). The D.A. decides what to charge, how many charges to make, whether to charge enhancements (based on the individual case: were there weapons, was the victim young or old, does the accused have a criminal record, etc.). A single event can be charged multiple ways and there is incentive to charge as many ways as possible because this raises bail and puts pressure on the arrestee.

Bail is a schedule made up by each county, based on crimes and enhancements. Judges make the bail schedule. Bail goes up almost every year. Things are weird now because of COVID, and will continue that way unless the voters eliminate cash bail in November. Either you pay the entire amount of the bail to the court in cash – generally impossible – or you pay a bail bondsman 10% to post a bond, which the bondsman keeps no matter what happens. This places a heavy burden on the resources of the accused. His clients were commonly indigent – 90% of his felony clients couldn't make bail and couldn't even pay 10% to bail bondsman.

Indigent arrestees are referred to the Public Defender; this delays the case 1 day so the Public Defender can interview. Arrestees who are charged are brought to court. On a given day, there might be 20-50 people in custody. On the first court appearance, arrestees are advised of the charges and asked if they can afford to hire a lawyer. If not, they are referred to the Public Defender, who then interviews them to see if they are indigent and financially eligible. Typically, when they appear with the Public Defender, they enter a not guilty plea and a time waiver. The Penal Code says a person has to be brought to court within 48 hours after arrest if they are in custody. If you want to go as fast as possible, the D.A. has 90 days from the plea to bring the case to trial. If he can't do 90 days, the D.A. has the option to dismiss a felony case and immediately refile it. It's very possible for people to insist on their rights to a speedy trial and still spend 6 months in custody before it begins.

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The 3<sup>rd</sup> court appearance – the pre-trial hearing – is basically a plea bargain session. The lawyers meet outside of court and talk. The D.A. looks at case and the police report, and makes an offer based on the seriousness of the offense and the defendant's background, prior criminal record, and neighborhood. The D.A. wants to resolve the case and get it off the calendar as fast as possible, so they make an offer to reduce the charge so the client can come out of custody that day, or soon thereafter if he pleads to an offense and is placed on probation. The Public Defender relays the offer to the client: that if you plead to one charge of felony assault or burglary, you're out of jail today, or when you're sentenced in 2 weeks after a probation report is written, and then you'll be on 3-5 years of felony probation. For the years on probation you have no 4<sup>th</sup> amendment rights. The courts impose a 5 way search charge – any law enforcement officer can stop you for any reason, or no reason, and search you, your personal effects, your car, and any parts of your home that you have access to.

A probation violation accusation – alleging something you did, or failed to do, like not attending a required course – means that you can be arrested if you deny the allegations. You have no right to a jury trial, just a hearing before a judge. There's no right to bail and no time limit on when the hearing happens. The burden of proof drops from *beyond a reasonable doubt* to *preponderance of the evidence* (a better than 50% likelihood). Due process has vanished. If found in violation, a probationer can be sentenced to the maximum penalty for the charges they plead to. Judges can get very cynical about this. Mr. Locke had a client he believed was innocent of the alleged probation violation and pleaded with the judge to just listen to the evidence at a hearing. He knew a judge who told him, "Locke, your client can admit to the probation violation and I'll give him two years in prison, or he can have his hearing and I'll give him 6 years. See what he wants to do."

The D.A. hopes to get young men on probation because then they're easy to deal with. Mr. Locke often told his clients who told him that they did not commit the offenses that they were charged with, that they should give him time to investigate the case and fight the charges at a trial, and the client would say, I can't afford the to spend 90 days in jail until a trial. I'll lose everything and my family will be out on the street, tell me what I can do to get out now. The carrot is getting out of custody; the stick is the years of felony probation and the risk of getting convicted at a trial and facing a possible massive sentence.

This is an institutional issue. It's not about whether individual policemen or D.A.s are reasonable and good hearted people. We're not willing to spend the time and money to have a full jury trial, any more than we're willing to spend time and money for a real mental health system.

People ask, how can you represent people you know are guilty? Mr. Locke said that those cases almost never go to trial, and his job is to soften the blow and get his clients the best deal he can. He said that what really bothers him is having to watch people plead to crimes when he knows they didn't commit the offence, or when he knows the prosecution can't prove it.

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Mike Ubell noted that we're approaching 8:15.

### **Audience Q and A**

*Terry Wiley:* Bill is right. I started with the system in 1989, when you just went along with the system. It was later in my career that I began to see and understand what Bill was talking about. This still exists today. The number of cases is overwhelming, you have to have a system. But that's been the system since the 1980s. He thinks it's softened a little. The pendulum was way to right when Bill was practicing. It's moved more to the center, maybe even a little to the left. We're now more sensitive to the cases we change. We try to be sure it's fair and just, but we also have to answer to the victims. Sometimes when we make an offer, how the victim feels about it is a consideration.

*Donald Dalke (CPAB):* The Police Commission is working on a policy on probation stops. Do you know where that stands?

*William Locke:* No, I'm not familiar with that. Terry sees things through the victim's eyes, his perspective is different. I've heard that the head of the Probation Dept. suggested 2 or 3 years of probation, and the judges said no, we want the full 5 years. Probation search clauses used be just for guns and drugs, now it's more for everything because it's so easy.

*Terry Wiley:* Yes, the D.A. asked for 2-3 years' probation and the judges refused.

*Mike Ubell:* Does OPD no longer ask about probation status?

*Officer Ladd:* We still ask, but we try to have something beyond just a probation search, as in some other information to say this guy may be involved in another crime. We don't just randomly stop and search.

*Mike Ubell:* Donald meant that the police used to stop and ask for probation status, you suggest maybe that is changing.

*Officer Ladd:* Yes, OPD is moving away from random searches, we now want a better reason.

*William Locke:* If a cop has someone's name they can find out if the guy's on probation. I salute OPD for moving in that direction.

*Donald Dalke (CPAB):* The Police Commission has been working on changing the use of force policy, I didn't realize they'd gotten to probation. Good for OPD to move in this direction

*Dan Kalb:* Yes, the Commission did work on a use of force policy. OPD is no longer allowed to search only because someone is on parole, that is a city policy. The Police Commission is reviewing a range of use of force policies. There will be a ban on chokeholds and carotid restraints, there's general agreement on that.

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*Jon Travis:* What are your opinions on the cash bail ballot proposal?

*William Locke:* Without cash bail, how do you hold people in custody if they haven't been charged? It's a good initial step.

*Terry Wiley:* The reason to go to no cash bail is mainly because people are held in custody because of their economic situation. It's an imbalance in the system, leading to outright unfairness. It's good to bring balance to the system and treat everyone fairly.

Mike closed the meeting at 8:30.

## **Neighborhood Crime Prevention Council Priorities for August 2020**

### **Beat 12Y:**

1. *Neighborhood Crime Prevention Council Priority:* Homeless camp at 63rd and College.

### **Beat 13X:**

1. *Neighborhood Crime Prevention Council Priority:* No current priority.

*Neighborhood Crime Prevention Council meetings  
are normally the SECOND Thursday of even-numbered months.  
Next meeting **Thursday, December 8, 2020** at 7:00 PM  
Location TBA pending the course of the pandemic*

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