

## Everett Community Streets Initiative

### *Criminal Justice Hypothetical and Questions*

Joe Smith moved to Everett 6 years ago. He had been homeless for several years before that, living in and out of shelters or camping outside when weather permitted. He never chose to be homeless but his drinking had gotten so bad that he when he lost his last job ten years ago for poor work performance, he never really tried to work again. It wasn't long after that his wife left him, which only made his drinking worse. There had hardly been a day in those ten years that he didn't drink a twelve pack of beer, or two or three bottles of wine, or a bottle of liquor if he could get his hands on it. And that was harder to do now that he had no money.

That is how he first came into contact with the law. When he ran out of booze one night, he decided to go to the grocery store and walk out with a twelve pack. The first time had been so easy. It was as if no one was aware of him. I guess he must have still looked respectable. He did that almost ten times before getting caught. He was actually pretty shocked when the officer took him to jail. He never thought of himself as a criminal. He had never hurt anyone before or been to jail. He was mad at the officer but also mad at himself. When he came to court the next day, the prosecutor offered a plea deal for no jail time. The public defender advised him that to properly represent him, she would need to review all the reports which could take at least a couple of days. She also advised that since he didn't have a stable address, the judge might set bail. Mr. Smith decided to plead guilty without an attorney, and the judge followed the recommendation of the City. Within a couple hours, he was back on the street ready to drink again.

That first arrest was only the beginning. Over the years, it seemed that he came into contact with the police more and more. Sometimes he would be drunk and sitting against a wall trying to sleep a few hours during the day and all of a sudden he was woken and told he was trespassing. He didn't have any place to go. His jail sentences kept getting longer and longer too. It was no longer one night, but sometimes a week, or a month, or even 60 days. One time he began to think he wanted to do something different, so he asked for help before leaving jail. He was connected with some services that helped him get some financial help, but he primarily used it for alcohol. He was required by probation departments in three different jurisdictions to pay fines and attend alcohol treatment. He once even had an inpatient bed date but was picked up on a warrant for missing a court date and could not make the \$500 bail. Once his bed date passed, he never tried to get it back.

One afternoon a year ago he was stopped by an officer who watched him walk out of the grocery store with a bottle of booze. Joe was very intoxicated already, so when the officer tried to book him into jail, his .325 BAC was too high and he was taken to the hospital. He liked sobering up in the hospital better than the jail. Six months after that, he was again stopped by a police officer for sleeping on the sidewalk. Joe got mad at the officer and raised his arm while talking with him. When the officer told him to stop, Joe, intoxicated, didn't listen and when the

officer attempted to temporarily place Joe in handcuffs a struggle ensued that brought three more officers to the scene. Joe was kicking while on the ground and ended up bruising one of the officers. He was charged with Assault in the Third Degree on an officer, a Class C Felony. From that day on, officers who were unfamiliar with him would see a caution notation associated with his name in their computer systems and treat him with more caution.

Finally, Joe believes he has an untreated mental illness that contributes to his situation. During his one alcohol evaluation, he was referred to seek a mental health evaluation. He remembers in school before he dropped out that he was placed in special class for kids with “mental problems” but he never considered himself mentally ill because he had been able to hold down a job until his drinking was too bad.

1. Imagine you are a police officer. You are dispatched to a call involving Joe Smith trespassing in the doorway of business in downtown Everett--the same place you have found him and arrested him 4 or 5 times previously. You find him asleep and surrounded by all of his personal belongings. Please choose what you believe the best course of action.
  - a. The criminal justice system is not dealing with Mr. Smith’s criminal behavior. He has been arrested numerous times but is released shortly thereafter and we get called time and time again. This time I’m going to put Mr. Smith in my police car with all his belongings and drop him off in a nearby city and let them deal with him.
  - b. Because the criminal justice system is not dealing with Mr. Smith by repeatedly letting him out of jail and not holding him accountable I’m going to sign a declaration that he is gravely disabled and place an involuntary hold on him until he is evaluated by a County Mental Health Professional. This will require I transport him and his belongings to the hospital and leave him there. I know he doesn’t meet the standard of gravely disabled but they will hold him for a few hours anyway.
  - c. The only legal option I have is to arrest Mr. Smith for the trespass and take him to the hospital for a clear to book. Once he is cleared for booking I will take him to the jail. Once he is booked into jail I will take all his belongings to the Property Room and book them in for safe-keeping. I know this process will take at least 3 hours and that Mr. Smith will be out of jail before I’m done with the report but that’s the price of business.
  - d. At the start of shift today I was advised the jail was at capacity and they will not book misdemeanors like trespassing. Mr. Smith is drunk and can’t receive a mental health evaluation until he is sober, and that would only be an option if he voluntarily agrees to participate. Under the circumstances the best I can do is arrest Mr. Smith for trespassing, transport him and his belongings to the police

station, give him a citation for trespassing and release him. I know we will get another call on him within an hour of release.

- e. I have dealt with Mr. Smith many times in the past and feel that enforcement will not accomplish anything. I have found that he is resistive to getting services of any kind. I recognize that there are more important issues and crimes that I need to respond to. I feel that any enforcement by me will just take time away from other citizen needs. I elect to warn Mr. Smith for trespassing and attempt to move him on.
2. Imagine you are the prosecutor who receives a police report for the above trespassing complaint involving Joe Smith. Please choose what you believe to be the best course of action.
    - a. Your previous plea offers have been for short stays at the jail, but this has not been effective in altering his behavior. This time you will recommend he serve a year in County Jail. You know this will cost the City \$24, 000 plus the costs of any medical expenses incurred while serving time in the jail, but this is the only way to stop the constant arrests and prosecutions and will guaranty a period of sobriety.
    - b. Your previous prosecutions have not been effective in altering his behavior, and you believe your limited prosecution resources would be better utilized for different cases, such as Assault and DUI. Further, because this is a social issue you determine you should decline to file any charges from this incident. You let the police department know that you won't file on any more cases against Mr. Smith unless it is a violent offense.
    - c. You file trespass charges. Joe Smith does not appear at his first appearance and a bench warrant issues. When he is apprehended, you recommend high bail, but the following day, the jail calls and says he is requiring intense medical supervision and might be released to hospital and request you recommend release from jail. You know that you will be paying for his emergency room visit unless you release him, but you also know as soon as he is released from the hospital he will be back on the streets and back in jail.
    - d. You make a referral to the CJA (Community Justice Alternatives) Court hoping a therapeutic court will help him resolve his criminal cases. You work with the CJA team to develop reasonable goals for Mr. Smith to receive treatment in the community in exchange for dismissal of charges at a later date.
  3. Imagine you are the judge at Joe Smith's first appearance hearing. You have the option to:
    - a. Authorize Mr. Smith to be released from custody on condition he not possess or consume any alcohol, and order that he be hooked up to an alcohol monitoring device (after finding that he has a place to stay with a phone while hooked up and waiving the cost of the device). Mr. Smith is released and doesn't report to Probation to get hooked up. A warrant is issued and he is booked into jail the

next day, after being taken to the hospital for medical clearance to book because of his .32 BAC.

- b. Release Mr. Smith over the City's objection because you can't make the required finding that he is either a threat to public safety or a flight risk. Mr. Smith is arrested that same night on a new trespassing charge and he is booked into jail after being taken to the hospital for medical clearance to book because of his .32 BAC.
  - c. Set bail in the matter. Later that day you receive a fax memorandum from the jail that despite your order that Mr. Smith be held on bail, the defendant was administratively released due to medical and/or mental health issues.
  - a. Make a finding that Mr. Smith's competency to stand trial is at issue and sign an order maintaining bail and referring him to Western State Hospital for a forensic examination. Five weeks later, the defense brings a motion to dismiss the charge for a due process violation – Mr. Smith has not yet been transported for the evaluation because of unavailability of space at Western State.
4. Imagine you are the public defender appointed to represent Joe Smith at his first court hearing.
- a. Argue for Mr. Smith's release from custody due to the less-serious nature of his charges and his lack of violent criminal history. The Court orders that as a condition of his release that he is required to meet with his attorney. Mr. Smith never calls to set up an appointment, and you have no contact with him by his next court date.
  - b. Argue for reduced bail. When Mr. Smith is held on his charges you try to meet with him in-custody within two days. The visitation schedule is full, and you don't end up seeing him until the following-week. When you arrive for your visit Mr. Smith refuses to see you.
  - c. Upon meeting with Mr. Smith you advise him of his right to trial, as well as the options for a referral to the CJA or a plea agreement. Mr. Smith asks you what will result in his release the soonest. You truthfully answer: a plea deal. Mr. Smith wants to plead on all charges immediately regardless of whether it's against legal advice
  - d. After meeting with Mr. Smith and explaining his options, he wants to get into treatment. You begin making calls to Jail Transition Services and other community care providers. You discover that Mr. Smith isn't enrolled in Medicaid or any other insurance program and has previously used up all his time via JTS.