



New Jersey Courts

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ESSEX VICINAGE 2018 LAW DAY



ELEMENTARY SCHOOL MOCK TRIAL FACT PATTERN

In Re Braggert

A separation of powers lawsuit between the Town Council of Happy Valley and the Mayor of Happy Valley over the removal of a statue from the Happy Valley Community Gardens
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Table of Contents

<u>Section</u>	<u>Page Number(s)</u>
Law Day Fact Pattern	2
Instructions for Teachers	5
Instructions for Attorneys/Judges	7
Judge's Opening Instructions to Students	8
Mock Trial Outline	10
Witness Statements	
For the Plaintiff	
Mia Wey	11
Councilman Ives Skyward	12
For the Defendant	
Chief of Police Bill Dozer	13
Councilwoman Edna Hearsall	14
Judge's Ending Instructions and Jury Charge	15
Verdict Sheet	17
Vocabulary List	19
Applicable Law	20

Law Day Fact Pattern

This case involves the powers of the Mayor and the powers of the Town Council in the town of Happy Valley. The Mayor's job is to supervise town employees and make sure they do a good job. These are called "executive powers". The Town Council's job is to decide what types of rules are good for the town. These are called "legislative powers". In our country, we also have courts who make decisions in certain types of disputes. These are called "judicial powers". The idea of having three different parts of government with independent powers is known as "Separation of Powers" and is a fundamental part of our system of government. In this case, it is the job of the court to decide whether the Town Council of Happy Valley (a legislative body) went too far and violated the separation of powers when they ordered Mayor Braggert (an Executive) to come to the Town Council and explain actions he had taken.

This all started with a young lady named Mia Wey. She is a high school student who, after school, likes to go with her family to the Happy Valley Community Gardens and grow vegetables and flowers. The garden is located on land owned by the town of Happy Valley.

A few weeks ago, Mia learned that Mayor Braggert and members of the Town Council were thinking about trying to sell the land where the Community Gardens are located. Mayor Braggert believes the town should sell the land in order to raise money for the town and reduce everyone's taxes.

Mia Wey was so upset that that she decided to do something about it. Mayor Braggert is known throughout the town because of the huge statue of a "Raging Bulldog" in front of his car business. He put it there to remind everyone of the days when he was a high school football star.

Mia Wey went to the school arts department and spent an entire week building a paper mache statue. She made a "Fearless Girl" statue. The statue is of a young girl who has her hands on her hips and her feet firmly planted on the ground. The "Fearless Girl" seems to be

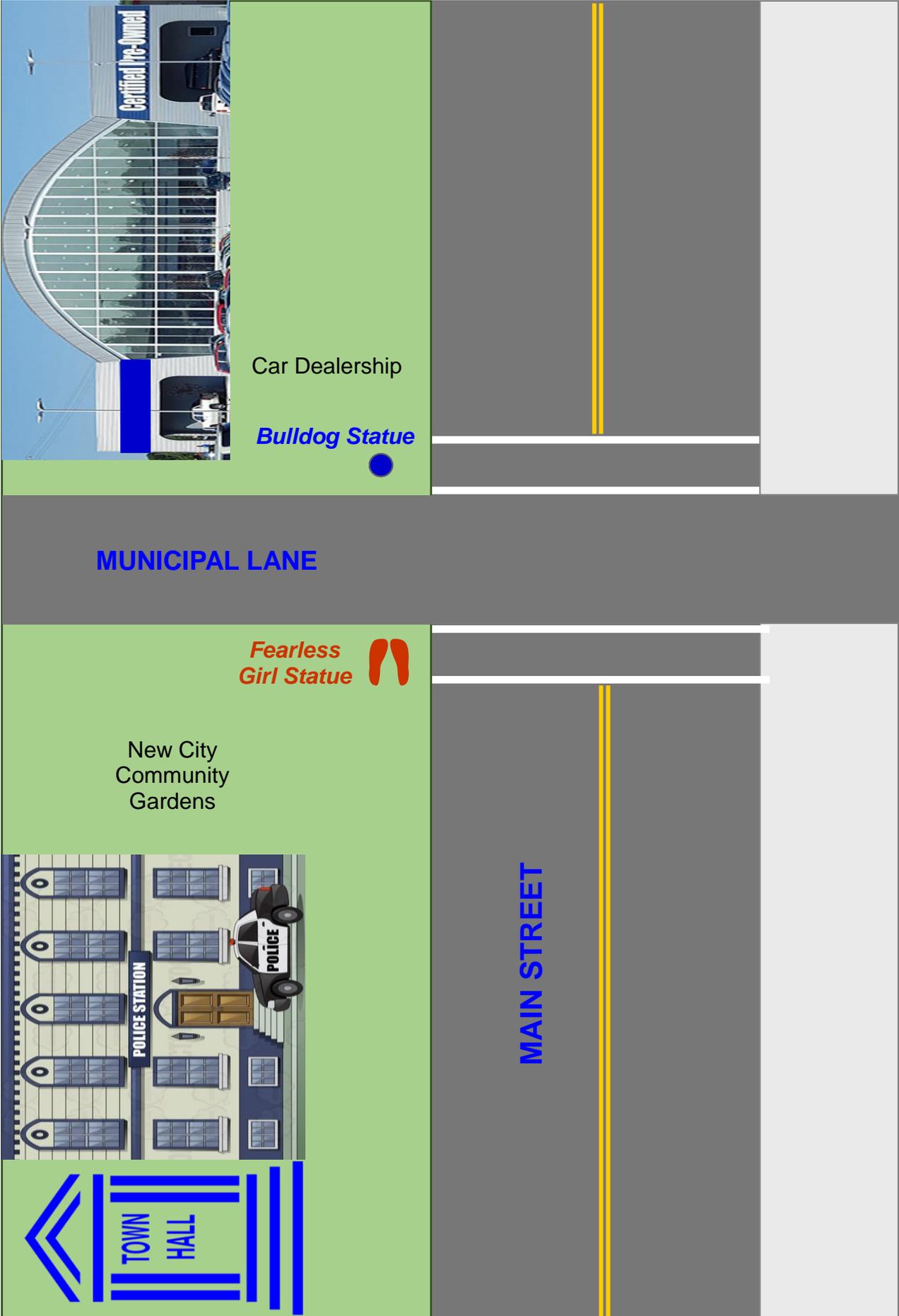
daring anyone to challenge her. Mia Wey took her “Fearless Girl” statue and placed it at the edge of the Community Gardens. The “Fearless Girl” statue was right across the driveway from Mayor Braggert’s “Raging Bulldog” statue. It looked to some of the town people like the “Fearless Girl” was saying to the “Raging Bulldog,” “You can’t push me around!”

Mayor Braggert was really upset. He ordered Chief of Police Bill Dozer to look into it. The Chief found that the “Fearless Girl” statue was illegal. Before anyone can put a statue on town property, a town law required that permission be obtained from the town. Mia Wey never got permission and a police officer removed the statue. Before it was removed a reporter from a local web blog took a picture of the “Fearless Girl” standing in front of the “Raging Bulldog”. The picture went viral and everyone in town was tweeting about it.

Many of the members of the Town Council were upset. They decided to investigate and asked Mayor Braggert to come to the Town Council and to explain his actions. Mayor Braggert said that he would not come. The Town Council then issued a subpoena to force him to attend. Mayor Braggert said that it was perfectly proper for him to ask the police to remove an illegal statue. The Town Council filed this lawsuit asking the court to enforce the subpoena and require Mayor Braggert to testify before the Town Council. Mayor Braggert has asked this court to stop the investigation by the Happy Valley Town Council arguing it was improper and outside their authority.

You, the members of the jury, will have to decide that question. We will be conducting a trial with a Judge and two attorneys. You will hear opening statements by the attorneys for the Town Council and for the Mayor. The jury will then hear testimony from several witnesses. At the end of the case, the jury will decide whether the Town Council is correct and the mayor must testify or that the Mayor Braggert is correct that the Town Council does not have the authority to investigate this action.

STREET DIAGRAM



Instructions for Teachers

This fact pattern involves a civil case where the Town Council wants the Mayor to testify in their investigation and the Mayor argues that the Town Council has no authority to investigate. On the day of the mock trial, a judge and two attorneys will visit your school. One of the attorneys will act as the attorney for the plaintiff, Town Council. The other attorney will act as the attorney for the defendant, Mayor Braggert.

Teachers should select four students to play the parts of the witnesses. The students should be familiar with their witness statements and the sequence of events. Two of the witnesses will be testifying for the plaintiff and two of the witnesses will be testifying for the defense. At the mock trial, witnesses will answer direct questions for the attorney calling them as a witness and cross-examination questions by the opposing attorneys. Both attorneys will make final arguments. At the end, the judge will give an explanation of the law and then allow the students or the jury to decide the outcome of the case. If you decide that the entire class will deliberate, the judge will encourage participation with the students to decide the outcome of the case.

Teachers, if they wish, can also choose two students to act as co-counsel. They will assist the visiting attorneys. The students can suggest things that should be included in the opening and closing statements. The co-counsel can also suggest a list of questions for each witness. Teachers should inform the visiting attorneys and the judge of the names of the co-counsel prior to the start of the mock trial. If the judge, attorneys and teachers agree beforehand, the students can present the case as the attorneys, with coaching from the assigned counsel.

The judge will decide whether to have a jury of six students or have the entire student body decide the case as a whole. Students should be familiar with the entire fact pattern and understand the sequence of events prior to the date of the mock trial. There will be a question-and-answer period following the mock trial presentation.

The Law Day theme this year is “Separation of Powers: Framework for Freedom”. Information about the importance of the separate and independent powers of the executive, the legislative, and the judicial branches of government can be found in the American Bar Association Law Day Planning Guide. Judges, attorneys and teachers are encouraged to lead a discussion with the student body. Additional information may be obtained by visiting the following website https://www.americanbar.org/groups/public_education/initiatives_awards/law-day.html.

Instructions to the Attorneys and Judges

The students have received the fact pattern in advance of the mock trial date. The teachers have selected students to portray the witnesses and, possibly, to act as co-counsel. The judge will preside over the mock trial. The attorneys will role-play. One attorney will act as the attorney for the plaintiff and one attorney will act as the attorney for the defendant. The Judge will give beginning instructions to the students. Each attorney will make a short opening statement. The direct and cross-examination of each witness should take no longer than five minutes. Then the attorneys will each make a short closing argument.

The judge will then give the ending instructions and final charge. This will include a brief explanation of the applicable law. The judge will provide an overview of the facts of the case and an overview of the issues and arguments. The judge will then lead the students and jury through an analysis of the issues so that they can make a decision. The students acting as jurors should be encouraged to express their various viewpoints. Feedback and participation are encouraged.

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Judge's Beginning Instructions to Students

My name is _____ and I am the judge in the case of In Re Mayor Braggert.

This is a civil trial in which the Town Council of Happy Valley is conducting an investigation and they want Mayor Braggert to testify. Mayor Braggert has answered that the Town Council is going too far and should not be allowed to investigate his perfectly lawful and proper conduct.

I would like to introduce to you the attorneys. The plaintiff, Town Council of Happy Valley, will be represented throughout these proceedings by _____ (insert name of attorney(s) playing role of plaintiff's attorney). I would like him / her to rise and introduce himself/herself to you. The defendant, Mayor Imma Braggert, will be represented by _____ (insert name of attorney(s) playing role of defendant's attorney).

I would like him/her to rise and introduce himself/herself to you, and his / her client.

Ladies and gentlemen of the jury, you are the sole judges of the facts in this matter. Your determination of the facts is to be based solely upon the evidence submitted during the course of the trial. When I use the term "evidence", I mean the testimony of witnesses who will testify and any exhibits, which may be marked into evidence.

The plaintiff and the defendant are entitled to jurors who are impartial and agree to keep their minds open until a decision is reached. Jurors must be as free from bias, prejudice, or sympathy as best they can be.

You will first hear the opening statements from the attorneys. The attorney for the plaintiff, Town Council of Happy Valley, will go first. The attorney for the defendant, Mayor Braggert, will go next. What is said by the attorneys in an opening statement is not evidence. The evidence will come from the testimony of the witnesses and the other evidence that maybe presented to you.

At the end of the testimony, the attorneys will speak to you again in closing statements. At that time, they will present to you their final arguments on why their clients should win.

After closing statements, you will receive your final instructions on the law from me and you will then consider your verdict. You must weigh the evidence calmly and without bias, passion, prejudice or sympathy. You must decide the issues of this case upon the merits.

Mock Trial Outline

OPENING STATEMENTS

Are we ready for opening statements? We will begin with the plaintiff.

Are we ready for witnesses? The Plaintiff may call its first witness.

WITNESSES FOR THE PLAINTIFF:

Witness: Mia Way

Witness: Councilperson Ives Skyward

Plaintiff rests

WITNESSES FOR THE DEFENSE:

Witness: Chief of Police Bill Dozer

Witness: Councilperson Edna Hearsall

Defendant rests

CLOSING STATEMENTS

JUDGE'S INSTRUCTIONS AND FINAL CHARGE

Statement of Mia Wey

My name is Mia Wey and I go to Happy Valley High School. I am very involved in the Happy Valley Community Gardens. My mother and I helped start the gardens two years ago. I got involved after reading about the garden on the White House lawn installed by First Lady Michelle Obama. She wanted to get everyone talking about the value of hard work and healthy food grown in your own town.

We had to go to a lot of meetings. Mayor Braggert was against the idea from the beginning. Luckily, enough people were in favor of it and the Community Gardens were approved. The Town Council allowed us to garden on a portion of the lawn near the Municipal building. We could use the town land as long as the town did not need it.

Opening day for the Community Gardens was awesome. There was a great town spirit with everyone working hard and getting dirty. I still spend a lot of time at the gardens. It's a good place to get exercise while growing really tasty food.

A couple of weeks ago I heard Mayor Braggert and Councilperson Hearsall talking. The Mayor said that the town should sell public properties that were not being fully used. This would raise money and reduce everyone's taxes. He said the first thing to sell would be that ugly Community Gardens next to his car business.

I was furious. I was so mad that I decided to embarrass the Mayor. I went to my Arts class and made a paper mache statue of a "Fearless Girl". The statute is of a young girl, hands on hips, daring the entire world to try to push her around. I put the statue on the corner of the Community Gardens right across the driveway from the Mayor's "Raging Bulldog" statue. It looked like my fearless girl was "in the face" of the raging bulldog.

The Town Council passed a motion to keep my statue. The police, however, still took down my statue after Mayor Braggert complained. Their excuse was that I needed a permit. I did not know I needed a permit. Besides, they took down my statute before I could even ask for it.

I think Mayor Braggert should have to come to the Town Council and answer for what he did. He does whatever he wants in this town and ignores the Town Council. That's not right.

Statement of Ives Skyward

My name is Ives Skyward and I am on the Town Council of Happy Valley. Two years ago, I helped get the Community Gardens started. Mayor Braggert was against the project. He wanted to sell the land to make money for the town. But I believe it is good for people to grow tasty food and teach kids about hard work and healthy eating.

Two weeks ago I read about something going on at the Community Gardens. A student, Mia Wey, heard the mayor talking about selling the Community Gardens. Mia was upset and decided to do something about it. She spent a week making a statue and put it up on the corner of the Community Gardens.

The statue was of a “Fearless Girl”. It was perfectly placed just across the driveway from the mayor’s ‘Raging Bulldog’ statue. Without saying a word, Mia made a loud statement about what she thought of the Mayor and his plans to sell the Community Gardens.

When I heard about this I got to work. I got the Town Council to pass a resolution supporting the “Fearless Girl” statue. The police, however, ignored the resolution and took down the statue.

The Town Council then voted to investigate everything. We asked Mayor Braggert to come and explain himself. Mayor Braggert said there was nothing to explain and that he was not coming. The Town Council then issued a subpoena ordering him to appear. Again, he said no.

This court should allow the Town Council to investigate and to force Mayor Braggert to answer for his actions. The public has a right to know the truth about what is going on.

Statement of Happy Valley Chief of Police Bill Dozer

My name is Bill Dozer and I am the chief of police of Happy Valley. I have been a police officer for 33 years. It was the happiest day of my life when Mayor Braggert chose me to be the chief of this amazing town.

As chief of police, I report to Mayor Braggert. He talks to me and the other department leaders almost every evening. Mayor Braggert keeps an eye on pretty much everything that goes on with the government of Happy Valley.

About two weeks ago I got a phone call about a statue someone had put up over at the Happy Valley Community Gardens. The mayor was very upset and asked me to look into it personally.

The statue was about four feet tall and was of a young girl with her hands on her hips and her feet firmly planted on the ground. The statue was placed on the corner of the Community Gardens just across the driveway from the “Raging Bulldog” statue Mayor Braggert has in front of his car business. The mayor was a football hero in high school and put up the “Raging Bulldog” statue to remind everyone of his glory days. Whoever put up the “Fearless Girl” statue was clearly trying to embarrass Mayor Braggert.

I talked to some town employees and found out that the statue was illegal. There are laws in our town that require permission before anyone can put up anything on town property. No permission was ever given for the “Fearless Girl” statue. I ordered the statue to be taken down and stored.

I do not know why the Town Council is investigating all this. The statue was illegal. As the chief executive of the town, Mayor Braggert has every right to order the statue to be removed. This investigation by the Town Council is just an attempt to embarrass Mayor Braggert before the next election.

Statement of Councilwoman Edna Hearsall

My name is Edna Hearsall and I am a Councilperson on the Town Council of Happy Valley. The Community Gardens were started a couple years ago by some families in Happy Valley. I was opposed to the idea because I thought that using this property for just a few families was a waste and a “give away”. Over my objections, the Town Council voted to allow the Community Garden on town property as long as everyone knew that it was just temporary.

Happy Valley is in difficult financial shape. Taxes for the residents are high and the amount of money needed to run the government is always going up. The Mayor and I believe that it would be good to sell unused town property like the Community Gardens to reduce everyone’s taxes.

I understand that the “Fearless Girl” statue was put up about two weeks ago. This was just an attempt to embarrass Mayor Braggert. Further, the statue was illegal! The law is very clear that you must get permission before any statue can be put up on town property. No one ever requested permission.

Mayor Braggert is the executive in charge of enforcing the laws in the town of Happy Valley. Mayor Braggert had every right to tell the chief of police to remove the statue. In fact, Mayor Braggert would have been wrong if he ignored the law and allowed the “Fearless Girl” statue to stay.

The Town Council, by a vote of 4-3, has decided to investigate and ordered the mayor to appear to the council members to discuss this matter. I voted against it. This investigation is a just a bunch of nonsense. The Town Council is just trying to embarrass Mayor Braggert before the next election.

I actually over heard a councilman saying exactly that. Councilperson Skyward said that this statue nonsense was “a gift from above and just what I need to embarrass Mayor Braggert so I can win the next election.” Councilperson Skyward said he hoped he could keep the investigation going all the way to election day.

I understand the Town Council of Happy Valley is the legislative branch of government and has the power to investigate things. However, there must be a proper reason. This is just a witch hunt and nothing but politics.

Judge's Ending Instructions and Final Charge

GENERAL INFORMATION

Ladies and gentlemen of the jury, the evidence in this case has been presented and the attorneys have completed their summations. It is now time for you, as jurors, to perform your job.

First, let me thank you for your attention and for listening so well during this trial. I would also like to compliment the attorneys on how well they presented their cases.

NATURE OF THE CASE

This is a civil case. The plaintiff, the Town Council of Happy Valley, has started an investigation into the conduct of Mayor Braggert regarding the removal of the "Fearless Girl" statue at the Happy Valley Community Gardens. They have issued a subpoena to Mayor Braggert requiring him to appear before them and respond to their questions. Mayor Braggert has refused and the Town Council is in court seeking an order requiring the mayor to appear. Mayor Braggert has answered saying that his actions were lawful and there is no reason to investigate. He asks that the court put a stop to the investigation by the Town Council.

FUNCTION OF THE JURY

When we started the case, I explained that you are the jury and will decide the case on the facts presented. You must decide which witnesses are likely telling the truth. If you find that the plaintiff, the Happy Valley Town Council, has proven its case you must find for the plaintiff. But if you decide that plaintiff has not proven their case, then you must decide in favor of defendant, Mayor Braggert.

DELIBERATIONS

As jurors, you are expected to use your common sense and to apply the law. It is your duty, as jurors, to talk with one another. Each of you must decide the case for yourself, but only after you discuss the case with your fellow jurors. As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Five of the six of you have to agree before a decision, one way or the other, is reached.

BURDEN OF PROOF

The burden of proof is on the plaintiff in this case to prove their claim by a preponderance of the evidence. To prove an allegation by a preponderance of the evidence, the plaintiff must convince you that it is more likely true than not true. You must ask yourself, as to each issue, if the plaintiff has satisfied that burden.

If the evidence on a particular issue is evenly or equally balanced or not persuasive, then that issue has not been proven. An easy way to understand this is to picture a scale or seesaw. If the weight on both sides is even, then plaintiff has not met the requirement to prove the case. However, if it tips a little more to plaintiff's side than the other, the plaintiff wins.

APPOINTING FOREPERSON:

(Insert juror's name) you are the foreperson of the jury because of your position in the jury box. You will tell us when a decision is reached.

THE JURY DELIBERATES, WITH JUDGE'S GUIDANCE

Verdict Sheet

Plaintiff

Town Council of Happy Valley : Date:

: No.

v. : Judge

Defendant

Mayor Braggert

-----X

Question No. 1 reads:

Should Mayor Braggert be required to appear before the Town Council and respond to these questions?

Yes ____ No ____

Question No. 2 reads:

Should the investigation by the Town Council of Happy Valley be allowed to continue?

Yes ____ No ____

Ms./Mr. Foreperson, please rise.

Ms./Mr. Foreperson, has this jury agreed upon a verdict?

Ms./Mr. Foreperson, is that verdict unanimous?

Vocabulary List

Attorney: a person who has been qualified by a State or Federal Court to provide legal services, including appearing in court.

Cross Examination: the examination of a witness by the party opposed to the one who produced her/him.

Evidence: Information that may be helpful for the jury which the Court allows to be admitted at trial.

Judge: an official in charge of the court who makes legal rulings.

Jury: a group of persons who promise to judge the case fairly.

Preponderance of the Evidence: the greater weight of the evidence required in a civil (non-criminal) lawsuit for the jury or judge to decide in favor of one side or the other.

Testify: to tell the Court and jury what you saw or heard as a witness.

Witness: an individual who actually sees or hears something. A person who testifies in court.

Applicable Law

Case Law

In Re Shain, 92 N.J. 524 (1983).

The New Jersey Supreme Court considered and decided the question of whether a Town Council, as part of its duties, could conduct legislative investigations. They further considered whether such investigations could include subpoenas for the testimony of the Mayor and Police Director.

The court held that under a Mayor and Council form of government, the executive powers are reserved to the Mayor. The mayor is charged with the administration of municipal services and the conduct of its employees.

The legislative power is reserved to the Town Council. They can pass resolutions and ordinances which establish the laws under which the municipality is governed. They further have the authority to investigate matters in order to determine what laws need to be established or changed.

Legislative investigations may include subpoenas to the Mayor, Police Director or other appropriate town official and do not, automatically, violate the doctrine of Separation of Powers. The Town Council was permitted to conduct an investigation and issue subpoenas as long as the investigation had a legitimate public end and did not exceed the bounds of a proper legislative function.

Statutes

Faulkner Act - Strong Mayor Charter

N.J.S.A. 40:69A-32 Mayor-Council plan

- (a) Each municipality hereunder shall be governed by an elected council, and an elected mayor. . .
- (b) ...Any administrative or executive functions assigned . . . to the governing body shall be exercised by the mayor, and any legislative and investigative functions assigned . . . to the governing body shall be exercised by the Council. L.1950, c.210p.472, s.3-2 eff. June 8,1950. Amended by L. 1985, c.374 ,s.1 eff. Nov. 26, 1985. (emphasis added).

N.J.S.A. 40:69A-36 Legislative Power

The legislative power of the municipality shall be exercised by the municipal council . . . [these include but are not limited to:]

- . . . (c) The conduct of a legislative inquiry or investigation; L.1950, c.210, p.473 s.3-6, eff. June 8, 1950. Amended by L.1985, c.374, s.2 eff. Nov. 26, 1985

40:69A-37.1 Mayoral control of administration

...It is the intent of the mayor-council plan of government to confer on the council general legislative powers, and such investigative powers as are germane to the exercise of its legislative powers, but to retain for the mayor full control over the administrative and over the administration of municipal services. L.1985 S.8 eff. Nov 26, 1985