



# New Jersey Courts

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## ESSEX VICINAGE 2018 LAW DAY



## MIDDLE & HIGH 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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## **Law Day Fact Pattern**

Mia Wey is a high school student who is passionate about ecofriendly causes. She is very involved in the recently formed Happy Valley Community Gardens.

The Happy Valley Mayor, Imma Braggert, is a champion of reducing taxes, slashing government spending and selling unused town properties to raise revenue. He also owns a car dealership in town. As a former football star on the Raging Bulldogs Championship High School team, Mayor Braggert erected a 6-foot tall “Raging Bulldog” statue on the corner of his auto dealership.

Mia Wey learned that Mayor Braggert and his political allies were going to try to get the Town Council to sell off various unused and vacant public properties to raise revenue for the town. This included the property used for the Happy Valley Community Gardens.

In protest, Mia made a paper mache replica statue of a “Fearless Girl” and placed it on the corner of the Happy Valley Gardens. The “Fearless Girl” statue was directly across the driveway from the mayor’s “Raging Bulldog” statue. The “Fearless Girl” statue, facing down the “Raging Bulldog” statue, was featured on a local news website and the picture went viral.

Mayor Braggert felt the “Fearless Girl” statue was a direct personal attack. He also believed that whoever put up the statue needed permission to do so and without the proper authority, the statue was an illegal use of public property.

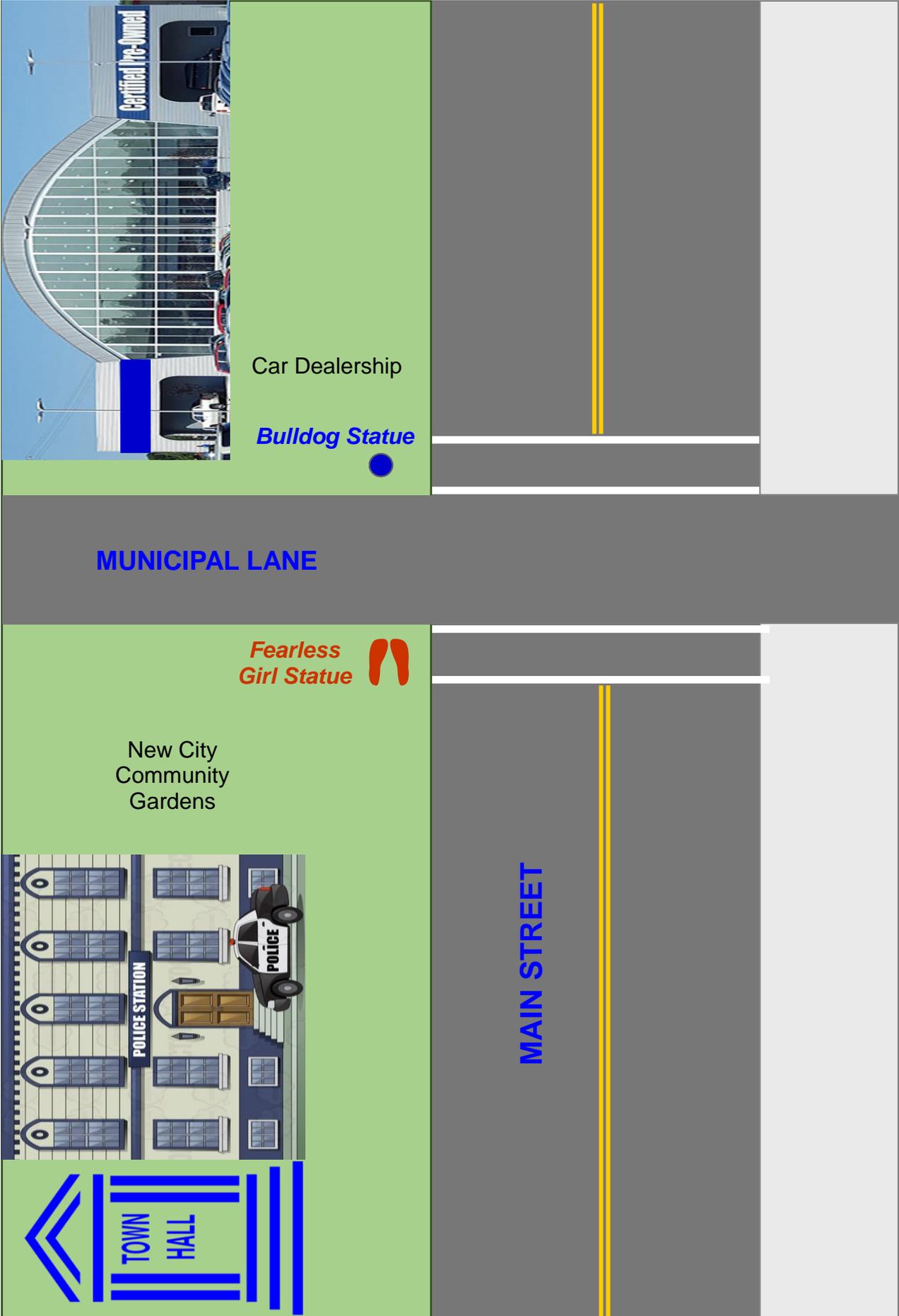
The Town Council stepped into the controversy by passing a resolution voicing its support for the “Fearless Girl” statue. The resolution encouraged the Happy Valley Parks Department to issue a permit. Following an investigation, Chief of Police Bill Dozer

determined the statue was illegal and ordered it removed. Before anyone can put a statue on town property, a town law required that permission be obtained from the town.

The Town Council then passed a resolution, by a vote of 4-3, to investigate the removal of the statue. The council asked Mayor Braggert to appear but he declined. The Town Council then issued a subpoena. Mayor Braggert refused to obey the subpoena arguing the removal of an illegal statue from public property is a function of the executive branch of government. He argued that the Town Council, as the legislative branch of government, does not have a legitimate basis to investigate.

The Town Council filed suit in the Superior Court seeking to have Mayor Braggert held in contempt for not obeying the subpoena. Mayor Braggert filed an answer and counterclaim which states that the Town Council, a legislative body, has no authority to investigate the executive action of removing an unauthorized statue from public property.

# STREET DIAGRAM



## **Instructions for Teachers**

This fact pattern involves a case in which the Town Council of Happy Valley seeks an order from the court enforcing their subpoena against Mayor Braggert of Happy Valley. The defendant argues that the subpoena should not be enforced and that the Town Council should be ordered to stop their investigation. Students should be familiar with the entire fact pattern prior to the date of the mock trial.

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 plaintiff, the Town Council of Happy Valley. The other attorney will act as the attorney for defendant, the Mayor of Happy Valley.

Teachers should select four students to play the parts of the witnesses. The students should be familiar with their witness statements. Some of the witnesses will be testifying for the plaintiff and some of the witnesses will be testifying for the defense. Witnesses will be cross-examined by the opposing attorneys. Both attorneys will make their closing arguments. If a jury has been empaneled, they will be sent to deliberate. Once a decision has been made, the judge will then lead a dialogue to discuss the issue and outcome. 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 should also choose two students to act as co-counsel. They will assist the visiting attorneys. The judge, the attorneys and the teachers will decide beforehand whether the student attorneys will assist visiting attorneys or actually present the case while being coached

by the attorneys. If the students are assisting the attorneys, they may suggest ideas that the attorney should include in the opening and closing statements. Students can suggest direct and cross-examination questions for the witnesses. Teachers should inform the visiting attorneys and judge of the names of the student co-counsels prior to the start of the mock trial.

For purposes of this mock court presentation, a jury will be empaneled. The judge will decide whether the student body as a whole will act as the jury or whether six students will be selected as a jury.

## **Instructions to the Judges/Attorneys**

The students will have received the fact pattern in advance of the mock trial date. The teachers have selected students to portray the witnesses and 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 defendants. The judge will give beginning instructions to the students. Each attorney will make an opening argument of not more than five minutes. The direct and cross-examination of each witness should take no longer than five minutes. Then the attorneys will each make a five-minute closing argument.

The judge will 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 through an analysis of the issues so that they may make a decision and discuss the issues. If a jury has been empaneled, the judge will participate with the students to decide the outcome of the case. If the students are acting as jurors, they should be encouraged to express their various viewpoints at the conclusion of the deliberation. Feedback and participation are encouraged. Following the presentation, a question-and-answer period is usually held with the students.

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](https://www.americanbar.org/groups/public_education/initiatives_awards/law-day.html).

## **Judge's Opening Instructions to Students**

My name is \_\_\_\_\_ and I am the judge in the case of In Re Braggert. This matter involves an investigation being conducted by the Town Council of Happy Valley over the removal of a statue from the Happy Valley Community Gardens. The Town Council of Happy Valley seeks an order from the court requiring Mayor Braggert to appear for a subpoena issued by an investigative committee of the Town Council of the City of Happy Valley. Mayor Braggert has filed an answer challenging the authority of the town council to conduct such an investigation.

I would like to introduce you to 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 and counterclaimant, Mayor Braggert will be represented by \_\_\_\_\_ (insert name of attorney(s) playing role of defense 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 must 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 defendant are entitled to jurors who are impartial and agree to keep their minds open until a verdict is reached. Jurors must be as free from bias, prejudice, or sympathy as humanly possible, and must not be influenced by preconceived ideas.

The first order of business will be the plaintiff's opening statement. In the opening statement, the plaintiff will present their case and will outline what he/she expects to prove. Following that, the defense counsel, if he/she chooses, will make an opening statement. You will then hear testimony from various witnesses and review other evidence introduced by the plaintiff and the defendant.

At the conclusion of the testimony, the attorneys will speak to you again in closing statements. What is said by the attorneys in opening and closing statements is not evidence. The evidence will come from the witnesses who will testify and from the documents and tangible items that are admitted in evidence.

Following closing statements, I will provide you with final instructions on the law and you will then retire to consider your verdict. It is your duty to weigh the evidence calmly and without bias, passion, prejudice or sympathy. You must decide 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 am a senior at Happy Valley High School. A couple of years ago, my mother and I helped kick-start the development of the Happy Valley Community Gardens.

At first, I thought this was my mother's way of getting me to eat more vegetables and less pizza. She is such a "nudge" sometimes. I eventually read about the garden on the White House lawn created by the former First Lady Michelle Obama. It was part of a nationwide campaign to improve children's health. She wanted to raise awareness about the value of nutritious and delicious homegrown food. I thought bringing the "Home Garden" movement to Happy Valley might also spark a discussion about the environment and global climate change.

I was inspired and went with my mother to all the Town Council meetings. Mayor Braggert and a few council people were against the idea. They believed there would not be enough people participating to make it worthwhile. Mayor Braggert said that valuable town property should not be used just to grow the same carrots that you could buy at the supermarket.

The discussion lasted forever. I never got used to how long people could talk about things without actually doing anything. In an attempt to move things along, I even addressed the Town Council. I was nervous at first but discovered that I had an ability to stand up in front of all these people and speak my mind. It was awesome when some of the council members actually started to listen.

In the end, enough people on the Town Council cosigned the initiative and the Happy Valley Community Gardens was created. The land was ours until the town decided to expand the municipal complex. Although not forever, I was happy to have the Community Gardens for as long as we could.

Opening day for the Happy Valley Gardens was awesome. We had dozens of residents there, shovels in hand and dirt under their fingernails. I grew blisters on both hands. There was such community spirit. I spent a lot of time there over the next two years. During the spring and summer months, I am at the Community Gardens three or four times a week. We plant tomatoes, carrots, broccoli, lettuce and spinach. I tried growing squash but a groundhog kept digging under the fence and eating the blossoms. The number of people involved at the gardens has gone down a little over the past year but the core group is still active.

For the last year, I have been the youth representative on the Town Council. I do not vote but do attend meetings and speak out on things that interest the youth of our town. About three weeks ago, I overheard Mayor Braggert complaining to Councilwoman Hearsall about the money wasted by vacant town property. He was particularly concerned about the high taxes that commercial property owners have to pay. Mayor Braggert told Councilwoman Hearsall that the biggest waste was that ugly garden across the driveway from his car dealership and it should be first on the list of vacant land to sell.

I was furious. I decided to make a statement. I have always been good in Art class. I spent an entire week building a paper mache statue. I used as a model a picture of the “Fearless Girl” statute on Wall Street. The statue is of a young girl, hands on hips, daring the entire world to try to push her around.

I took my statue and put it on the corner of the Happy Valley Community Gardens, just opposite the driveway from Mayor Braggart’s “Raging Bulldog” statue. It was my statement to the world that the Happy Valley Community Gardens was not going anywhere.

The issue of my paper mache statue came up at the council meeting the following Monday. Mayor Braggert was not there that night but the majority of the council voted to encourage the Parks Department to issue a permit for the statue. I did not know I even needed a permit. However, before I could apply, the statue was removed. The council then voted to investigate the matter and asked the mayor to testify. Mayor Braggert refused the council’s request and refused to obey a subpoena.

I think you should force Mayor Braggert to answer our questions. The Town Council is an equal part of the town government and should be allowed to investigate the mayor’s arbitrary decisions. Mayor Braggert is abusing his powers by not testifying.

## **Statement of Councilman Ives Skyward**

My name is Ives Skyward and I am a councilmember in Happy Valley. I have long been worried about the future of our town. New businesses and housing developments are going up everywhere. It's too crowded. We are not protecting or expanding our parks and open spaces to prevent urban sprawl. My campaign slogan in the last election was: "Let's Keep Happy Valley Green." A slim majority of voters did not see it my way and Mayor Braggert was re-elected again.

I was part of the fight, two years ago, to get the Happy Valley Community Gardens up and running. There are a number of people in town who wanted to preserve open space, grow nutritious food and teach our youth about hard work. I was particularly impressed by the fact that some of the garden's advocates were high school students. Just imagine: students who chose to get involved and take a stand about the future of their town.

Mayor Braggert and his cohorts finally relented and the Happy Valley Community Gardens were started. The Community Gardens were allowed to use a corner of the lawn near the Municipal Building. They could stay there as long as enough people were involved with the Community Gardens. Someday the town would likely decide to expand the Municipal Complex and would take the land back.

I am not a gardener but even I went down opening day and grabbed a shovel. It was wonderful to see all of those people, working together, turning a lawn into a garden. I do not have the time or temperament for gardening and have not been back. Besides, it was hard work. But I am happy to say that every fall, members of the Community Gardens say thank you by gifting me a beautiful basketful of tomatoes, lettuce, peppers, and eggplants grown in the Happy Valley Community Gardens. The food is delicious!

About two weeks ago I read about a controversy at the Community Gardens. A student, Mia Wey, overheard Mayor Braggert and his allies talking about selling town properties. Mia decided to protest by putting up a "Fearless Girl" statue. It was perfectly placed: standing defiantly in front of that hideously oversized "Raging Bulldog" statue on the corner of Braggert's Auto Mall. Mia Wey has loads of artistic talent. Without a single word being uttered, her statue made a profound statement about the future of our town and the willpower of our youth.

I called my allies on the Town Council. We arranged for a resolution of the Town Council supporting the “Fearless Girl” statue and encouraging the parks director to issue a permit and allow the statue. The resolution was passed by Town Council with a vote of four to three.

The police, however, removed the statue the next day. They ignored the resolution passed by the Town Council. They did not even permit Mia to apply for a permit. I was heartbroken and outraged. All the time and effort put in by Mia to make this statue and they just carted it away. How dare Mayor Braggert and the police ignore the resolution of the Town Council!

We decided to conduct an investigation into the whole thing. The Town Council voted, four to three, to form a legislative investigative committee composed of all council members. We invited Mayor Braggert to come before us and explain his actions. Mayor Braggert said he did not have to explain anything to the council and he was not coming. The Town Council then issued a subpoena ordering him to appear. Again, he said no.

I believe this court should allow this investigation to go forward and force Mayor Braggert to answer for his actions. He is running roughshod over this town and doing whatever he wants without consulting anyone. The Town Council has a right to be a part of the decisions being made about the future of Happy Valley. The public has a right to know the truth about what is going on so they can judge whether their mayor is abusing his powers.

## **Statement of 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. Mayor Braggert appointed me chief two years ago. It was the happiest day of my life when Mayor Braggert selected me, over three others, for the job.

Mayor Braggert is very active in town affairs. Every evening he leaves his car dealership and comes to town hall. He says that his first full time job is the owner of Braggert's Auto Mall. However, his second full time job is mayor of Happy Valley. His workday as mayor starts at 5:00 p.m. every night and often goes past midnight.

Mayor Braggert spends an amazing amount of time talking to department managers and town employees. He is a full time executive who oversees all of the day-to-day activities of the Happy Valley Government. There isn't much that happens in Town Hall that does not go through Mayor Braggert.

Every department head in town, including me, has received telephone calls from Mayor Braggert late at night asking about one thing or another. The first time I got a telephone call late at night, my wife jumped out of bed and wanted to know who was hurt. Now, when the phone rings at midnight, my wife just mumbles from her sleep: "say hello to the mayor for me."

About two weeks ago I received one of these late night telephone calls. Mayor Braggert told me that there was an illegal statue that someone had put up at the Happy Valley Community Gardens.

I have heard Mayor Braggert excited before. I mean, anyone who has ever watched one of his cable TV car commercials has seen Mayor Braggert excited. But in this phone call the Mayor seemed truly angry. For some reason the Mayor found this statue to be a personally insulting. I told Mayor Braggert that I would look into the matter and get back to him.

On Sunday, I walked over to the Community Gardens and saw why the mayor was so upset. The statue was about four-foot tall and made out of paper mache. It was of a young girl with her hands defiantly on her hips and her feet firmly planted on the ground. The statue was directly across the driveway from Mayor Braggert's "Raging Bulldog" statue. It was clear that someone put up the statue to embarrass the mayor. The statue was placed in a way that suggested the young girl was standing her ground, unafraid and undaunted; just daring the raging bulldog to try to move her.

Before doing anything, I called the Parks Director. He was not happy about coming to work on a Sunday. The Parks Director confirmed that the statue was on town property. I asked him to look into the matter further. He got back to me Monday and told me that the laws of Happy Valley are clear.

The Town Code of Happy Valley provides as follows:

**Section 58:21(a) Rules and Restrictions:**

The following acts shall be prohibited and/or restricted in any park:

2. No person shall construct or erect any permanent or nonpermanent structure, plaque, monument or statute unless a written permit for same is first issued hereunder.

**Section 58-21(b) Permits:**

1. Unless otherwise provided by this Code, permits as set forth herein shall be issued at the discretion of the Parks Director.
2. Any person seeking issuance of a permit hereunder shall file an application with the Department and remit payment of the applicable \$5 fee.

The parks director confirmed that no permit had been requested for the statue and that it was illegally erected on Happy Valley property.

On Monday night, I tried to call Mayor Braggert to let him know what I found. The Mayor, however, was busy taping a cable TV commercial. Considering what I heard from the Parks Director, I spoke with the duty officer and told him to have a patrolman remove the fearless girl statue and place it, for now, in the D.P.W. shed. This happened Tuesday morning and the statue is still being stored.

Removing illegal statues on public property is clearly the job of the police and the mayor. I do not understand why the Town Council is getting involved. I never did understand the politics of this town.

## **Statement of Councilwoman Edna Hearsall**

My name is Edna Hearsall. I am a resident of Happy Valley and a member of the Town Council. I am friendly with Mayor Braggert and we often campaign together.

About two years ago, several people in Happy Valley asked to use some town owned property for a vegetable garden. Mayor Braggert and I were against the idea. We thought that giving away town property for the use of just a couple of people was a bad idea.

Vacant land is a valuable asset. It should be used by the town in a way that benefits the greatest number of Happy Valley residents. Instead of a garden for just a few families, the property should be sold by the town to raise revenue and drive down everyone's property taxes. Mayor Braggert and I are in favor of slashing government spending and raising revenue wherever and whenever possible.

At the end, there was a compromise. The Happy Valley Community Gardens was created and allowed to use the lot next to the municipal building. However, permission to use the land could be cancelled by the Town Council at any time and for any reason. The Happy Valley Community Gardens would not own the land or lease the land. Rather, they would be allowed to borrow the land. It was clear that this garden was not going to be in place forever.

Recently, property values have been going up. Mayor Braggert talked to others council members and myself about selling the property. The number of Happy Valley families participating in the garden's activities has been steadily dwindling. Apparently, talking about gardening is a lot easier than actually getting your hands dirty.

The troubles started about two weeks ago. Mia Wey, a high school student and a youth representative on the Town Council, overheard Mayor Braggert and I talking. She was furious and vowed to fight us at every step. A week later, a statue of a "Fearless Girl" was placed, illegally, on the corner of the Happy Valley Community Gardens. It was most embarrassing.

Mayor Braggert contacted the chief of police and told him to investigate. The mayor, as the executive in charge of administering the laws of Happy Valley, had every right to tell the chief to take down a statue that was illegal. Mayor Braggert would have been derelict in his duties if he didn't tell the chief to remove the statue. Before the statue was removed, a reporter from the local news website posted a picture of the "Raging Bulldog" and the "Fearless Girl" on his blog. The picture went viral. Everyone in town was tweeting about it.

The Town Council even got into the act by passing a resolution, four votes to three, voicing support for the “Fearless Girl” statue. They called it a tribute to the youth of Happy Valley and their part in the creation of the Happy Valley Community Gardens. After the “Fearless Girl” was removed, the Town Council voted to investigate Mayor Braggert.

I voted against these resolutions. This is just a load of rubbish. It is an attempt to stir up political trouble for Mayor Braggert. The majority of the Town Council voted to investigate the Mayor. And for what? For doing his job!

This is not just my opinion. I actually overheard a councilman talking about this. Councilman Ives Skyward said to one of his cohorts that: “This statue nonsense is like a gift from above that has fallen into my hands.” He said that this was just the issue he needed to finally defeat Mayor Braggert and win the next election. All the Town Council had to do was keep the controversy alive for a while and keep people talking about it. Councilman Skyward said: “I hope we can keep this investigation going all the way until election day!”

I understand the Town Council is the legislative branch of government in Happy Valley. They have a right to conduct legislative investigations into matters where there is a proper legislative purpose. But this investigation is just a “witch hunt.” It is not like the Town Council is considering a new set of laws or general policies for Happy Valley. There is no legitimate basis for this investigation. I believe the court should withdraw the subpoenas issued to the Mayor and order the Town Council to stop its supposed legislative investigation.

## **Judge's Ending Instructions to Students 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. We now arrive at the time when you, as jurors, are to perform your final function in this case.

At the outset, let me express my thanks and appreciation to you for your attention to this case. I would like to commend counsel for the professional manner in which they have conducted themselves and for their courtesy to the court and jury during this trial.

As jurors, it is your duty to weigh the evidence calmly and without passion, prejudice or sympathy. Also, speculation, conjecture and other forms of guessing play no role in the performance of your duty.

### **NATURE OF CHARGES**

The plaintiffs in this action are the Town Council of the City of Happy Valley. They are conducting an investigation into the removal of a statue from town property. As part of this legislative investigation, they have subpoenaed Mayor Braggert. The plaintiffs argue that the subpoenas should be enforced by the court and the investigation be allowed to proceed.

The defendant in this action is Mayor Braggert of Happy Valley. He argues that the legislative investigation is overbroad and improper. The defendant argues that the legislative investigation is an improper interference with the executive powers of the mayor and violates the principles of Separation of Powers. It is his position that the subpoenas should not be enforced and the court should order an end to the legislative investigation.

### **FUNCTION OF THE JURY**

At the start of this case, I explained that you are the judges of the facts. You and you alone are the sole and exclusive judges of the evidence, the credibility of the witnesses and the

weight to be given to the testimony of each witness. It is your sworn duty to arrive at a just conclusion after considering all the evidence which was presented during the course of the trial.

### **FUNCTION OF THE COURT**

The function of the court is to determine all questions of law arising during trial and to instruct the jury as to the law which applies in this case. You must accept the law as given to you by me and apply it to the facts as you find them to be.

### **CREDIBILITY OF WITNESSES**

As the judges of the facts, you are to determine the credibility of the witnesses. In determining whether a witness is worthy of belief, you may take into consideration the witness's demeanor, inconsistent statements and any and all other matters in the evidence which serve to support or discredit the testimony.

### **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.

### **INSTRUCTIONS AS TO VERDICT FORM**

To assist you in reporting a verdict, I have prepared a verdict sheet.

**APPOINTING FOREPERSON:**

*(Insert juror's name)* you are the foreperson of the jury because of your position in the jury box. You will preside over the deliberations and tell us the verdict when reached. Your vote carries no greater weight than that of any other deliberating juror.

**THE JURY DELIBERATES, WITH JUDGE'S GUIDANCE**

**THE VERDICT IS RECEIVED AND READ AS TO EACH COUNT**

**Verdict Sheet**

Plaintiff

Town Council of Happy Valley

: Date:

: No.

v.

: Judge

Defendant

Mayor Braggert

-----x

Count No. 1 reads:

Should the subpoena issued against Mayor Braggert be enforced?

Yes \_\_\_\_ No \_\_\_\_

Court No. 2 reads:

Should the legislative 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

**Admissible Evidence:** evidence the court allows to be admitted at trial. Evidence which the trial judge finds is useful in helping the trier-of-fact, which cannot be objected to on the basis that it is irrelevant, immaterial, or violates the rules against hearsay and other objections.

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

**Burden of Proof:** a duty placed upon a civil or criminal defendant to prove or disprove a disputed fact. In a criminal trial, the burden of proof requires the prosecutor to prove the guilt of the accused “beyond a reasonable doubt.” In a civil trial, the burden of proof is usually “by a preponderance of the evidence.”

**Circumstantial Evidence:** evidence in a trial that is not obtained directly from an eyewitness or participant and requires some reasoning to prove a fact.

**Credibility:** whether testimony is worthy of belief, based on competence of the witness and likelihood that it is true.

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

**Damages:** the amount of money that a plaintiff, the person suing, may be awarded in a civil case.

**Deliberate:** to weigh, discuss and consider.

**Direct Examination:** the examination of a witness by the party on whose behalf he/she is called.

**Evidence:** every type of proof legally presented at trial (allowed by the Judge) which is intended to convince the trier-of-fact of alleged facts material to the case.

**Exhibits:** a paper, chart, or other item presented to the court.

**Judge:** an official with the authority and responsibility to preside in a court, try lawsuits and make legal rulings.

**Jury:** a group of persons sworn to render a verdict or true answer on a question or questions submitted to them.

**Jury Charge:** direction that the Judge gives the jury concerning the applicable law of an issue or case.

**Preponderance of the Evidence:** the greater weight of the evidence required in a civil (non-criminal) lawsuit for the trier-of-fact (jury or judge without a jury) to decide in favor of one side or the other.

**Testify:** to give evidence, 'under oath', as a witness.

**Verdict:** a jury's decision or judgment.

**Witness:** an individual who actually sees, hears or perceives something; an individual who provides testimony 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