

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JON BEELER,) (
) (
Plaintiff,) (
VS.) (CIVIL ACTION
) (NO. 3:00CV2441-M
JOHN ROUNSAVALL,) (
INDIVIDUALLY; MARY GAYLE) (
RAMSEY, INDIVIDUALLY;) (
AND THE CITY OF TERRELL,) (
TEXAS,) (
) (
Defendants.) (

VOLUME 1 OF THE
ORAL DEPOSITION OF MARY GAYLE RAMSEY

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- - - - -

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By Mr. Nacol ----- 5

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7	INDIVIDUALLY; MARY GAYLE) (
8	RAMSEY, INDIVIDUALLY;) (
9	AND THE CITY OF TERRELL,) (
10	TEXAS,) (
11) (
12	Defendants.) (

--*-*-*

APPEARANCES:

NACOL, WORTHAM AND ASSOCIATES, P.C.
By: MARK A. NACOL
990 S. Sherman Street,
Richardson, Texas 75081
Appearing for the Plaintiff.

NICHOLS, JACKSON, DILLARD, HAGER & SMITH, L.L.P.,
By: MELISSA M. MORALES
1800 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201
Appearing for the Defendants.

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VOLUME 1 of the DEPOSITION upon oral examination of the
witness, MARY GAYLE RAMSEY, taken on behalf of the
Plaintiff in the above-entitled cause, wherein JON BEELER
is the Plaintiff and JOHN ROUNSAVALL, INDIVIDUALLY; MARY
GAYLE RAMSEY, INDIVIDUALLY, AND THE CITY OF TERRELL, TEXAS
are the Defendants, pending in the United States District

1 Court, for the Northern District of Texas, Dallas Division,
2 before Susan M. Owen, a Certified Shorthand Reporter in and
3 for the State of Texas, on the 12th day of September, A.D.
4 2001, in the offices of the City of Terrell, 201 East Nash
5 Street, Terrell, Texas, between the hours of 12:31 p.m. and
6 3:28 p.m, pursuant to the Federal Rules of Civil Procedure.

7 MARY GAYLE RAMSEY,
8 having been first duly sworn, testified as follows:

9 (Time: 12:31)

10 EXAMINATION

11 (Exhibit No. 1 through 21 marked)

12 QUESTIONS BY MR. NACOL:

13 Q. Please state your full name for the jury

14 A. My name is Mary Gayle Ramsey.

15 Q. And your date of birth, ma'am?

16 A. 6/21/53. And Gayle is spelled G-a-y-l-e.

17 Q. Okay. Thank you. And your Social Security
18 number?

19 A. 451-82-3959.

20 Q. And your driver's license number?

21 A. Oh, gosh. 062 -- Wait a minute. 06280119,
22 Texas.

23 Q. Okay. You are an attorney, are you not?

24 A. Yes.

25 Q. So you probably have taken depositions in your

1 time.

2 A. Occasionally.

3 Q. And are you familiar with the format of what
4 we're doing here today?

5 A. Yes, I am.

6 Q. You understand the lady next to you on the left is
7 taking what we say word-for-word verbatim?

8 A. Yes.

9 Q. And that will be reduced to a little bound
10 manuscript you'll have an opportunity to review to see it
11 for correctness and make changes on the corrigendum page and
12 return it.

13 A. Yes.

14 Q. You understand those changes do not -- the rules
15 don't provide for you to change your answers, but simply to
16 correct an error?

17 A. Yes.

18 Q. The most common error is the word "not" either
19 being inappropriately placed or omitted in a sentence. If
20 it's misreported, you have an opportunity to correct that.
21 Do you understand?

22 A. I understand.

23 Q. And you can supplement it with new information if
24 you choose to do so. Do you understand that?

25 A. Yes, sir.

1 Q. I would like to cordially and professionally get
2 through this thing here today as quickly as we can, but we
3 do have some areas to look at. I'm not the most artful
4 question-asker in the world. If I ask a question that you
5 don't understand, if it is vague or ambiguous or if it's
6 couched in such a fashion that it requires a "yes" or "no"
7 to answer a question that cannot be answered "yes" or "no,"
8 "Are you still beating your children," type question that
9 requires a further answer, can we have an agreement that
10 rather than answer the question, you'll stop me and ask me
11 to repeat it in a such a fashion that you do understand it?

12 A. Yes.

13 Q. With that agreement, I'll ask the jury to
14 predispose that the answers you do give to the questions I
15 propound are your true and correct sworn answers. Fair
16 enough?

17 A. Fair.

18 Q. And you understand this is under oath?

19 A. Yes.

20 Q. And you understand that a false statement in this
21 deposition as to a material issue is a very serious crime?

22 A. Yes, sir.

23 Q. The rules don't permit your lawyer or you to break
24 to talk. That's the new rules. But I'm not here -- this is
25 no torture session. If you want to take a break at a

1 breaking spot, at any time you want to, just tell me and
2 we'll break.

3 A. All right.

4 Q. Probably I don't need to say this to you, but we
5 try to avoid the use of slang in depositions. This is not
6 being videotaped, so "uh-huh," "yeah" or a shrug of the
7 shoulders, I know exactly what you mean, but it won't make
8 it to the printed word. And it might misinterpreted. So
9 I'd ask you to answer "yes" or "no" in formal English to the
10 extent possible and avoid slang, "uh-huh," "yeah," and those
11 sorts of things. Fair enough?

12 A. Fair.

13 Q. Okay. Are you married?

14 A. Yes.

15 Q. What is your husband's name?

16 A. James.

17 Q. James --

18 A. Tuggle, T-u-g-g-l-e.

19 Q. Okay. Do you go by Tuggle or Ramsey?

20 A. Ramsey in my professional life.

21 Q. And do you have any children?

22 A. Yes, two.

23 Q. And how old are there?

24 A. 12 and 15.

25 Q. Okay. Do they go to school here in Terrell or --

1 A. No.

2 Q. Where do they go to school?

3 A. Dallas.

4 Q. Do you live in Dallas?

5 A. No.

6 Q. Are the kids living with their dad?

7 A. No, they live with me. They live with both of us.

8 Q. How is it that -- They go to private school?

9 A. They're in private school.

10 Q. Okay. What school do they go to?

11 A. Episcopal School of Dallas.

12 Q. All right. And where do you reside?

13 A. Heath, Texas.

14 Q. Is there an address there?

15 A. 108 Charlotte Court.

16 Q. Okay. And ZIP code?

17 A. 75087.

18 Q. Thank you, ma'am. And what's your phone there?

19 A. 972/771-9935.

20 Q. Do you have a cell phone?

21 A. Yes.

22 Q. What is that number?

23 A. 214/532-6873.

24 Q. Okay. And where are you employed at this time?

25 A. I'm in private practice.

1 Q. And where's your office?

2 A. Terrell.

3 Q. Address?

4 A. 119 North Frances.

5 Q. Are you in practice alone or in a partnership or --

6 A. I'm a sole practitioner.

7 Q. Okay. Do you operate as a professional
8 corporation or --

9 A. Yes, I do.

10 Q. -- a limited liability company?

11 A. Professional corporation.

12 Q. What is the full style of that?

13 A. Mary Gayle Ramsey, P. C.

14 Q. And is it an insured entity?

15 A. I don't understand what you're asking.

16 Q. Do you have malpractice insurance?

17 A. No.

18 Q. Has the City of Terrell indemnified you in this
19 proceeding?

20 A. As far as any --

21 Q. Damages.

22 A. -- indemnity agreement?

23 Q. Yeah.

24 A. I'm not aware of any indemnity agreement.

25 Q. Have you ever been told that they'll cover any

1 losses that you might have in this?

2 A. No, sir.

3 Q. Okay. I didn't know. Sometimes the city has
4 indemnity provisions for employees; sometimes it doesn't.

5 A. Well, as far as any type of indemnity agreement
6 between the city and myself, there is none.

7 Q. Do you have any oral agreements or representations --

8 A. No.

9 Q. -- in that regard? Okay. Are you just an
10 independent contractor for the city or --

11 A. Yes.

12 Q. And how much do you work for the city?

13 A. Are you asking percentage of my practice is for
14 the city?

15 Q. Hours.

16 A. I bill on an hourly basis, which varies from month
17 to month.

18 Q. But on an average how much time do you put in in a
19 month?

20 A. I'd probably say a third to a half of my practice.

21 Q. And are you the city attorney for --

22 A. I'm the civil city attorney.

23 Q. An is there a criminal --

24 A. There is another city attorney that handles the
25 criminal matters.

1 Q. Who is that?

2 A. Greg Shumpert, S-h-u-m-p-e-r-t.

3 Q. Okay. Do you have anybody else on your staff or
4 do you just --

5 A. No.

6 Q. -- do it all?

7 A. I do it.

8 Q. Now, when the city pays you, do they pay you by
9 the hour?

10 A. Yes.

11 Q. Okay. And do you have any minimums or retainers
12 or anything --

13 A. No.

14 Q. -- like that monthly?

15 A. No, I do not.

16 Q. Okay. And what do you charge by hour to the city?

17 A. I charge at a reduced rate, and the charges, I
18 believe, are paid at the rate of 125 an hour.

19 Q. And what is your normal rate?

20 A. 195.

21 Q. Okay. Do you have a paralegal?

22 A. Yes.

23 Q. And do you bill for her time also?

24 A. No.

25 Q. What is your paralegal's name?

1 A. April Delacruz, D-e-l-a-c-r-u-z.

2 Q. Owe does the city 1099 you?

3 MS. MORALES: Objection, speculation. To the
4 extent she knows that.

5 THE WITNESS: I don't know.

6 Q. (MR. NACOL) Tell the jury how you show your
7 income on your tax returns.

8 A. I report it myself.

9 Q. And how do you report it? I mean, does the city
10 send you a -- do you get a W-2 or -- You've got to get
11 either a W-2 or a 1099.

12 A. Then it's a 1099.

13 Q. Okay. Do they withhold?

14 A. No.

15 Q. Do you have any type of retirement plan or
16 anything like that?

17 A. No.

18 Q. Who is your supervisor for the city?

19 A. The city council.

20 Q. And they pretty much provide the offices with
21 details of your work?

22 A. Yes.

23 Q. And are you the complete legal department for the
24 city? I mean -- I don't mean that facetiously. Are there
25 employees -- Do you have employees here under you,

1 secretaries here for the city?

2 A. No, I do not.

3 Q. Okay. Are there other people in the legal
4 department here?

5 A. No, I am the legal department.

6 Q. Okay. Where did you graduate from high school?

7 A. Terrell. Terrell High School.

8 Q. And did you receive any awards at that time?

9 A. Not that I remember.

10 Q. And what was your grade point, if you recall?

11 A. I don't recall.

12 Q. Was it B, A or C?

13 A. It was A or B. I can't recall.

14 Q. Okay. Where did you go to college?

15 A. Baylor.

16 Q. Okay. And what was your degree there?

17 A. BA, bachelor of arts.

18 Q. What was your major?

19 A. English and history.

20 Q. Okay. And what year did you get your degree?

21 A. 1974.

22 Q. Okay. And did you have any minors?

23 A. Not that I remember.

24 Q. And did you graduate magna, summa cum laude?

25 A. No.

1 Q. What was your grade point in college?

2 A. I don't remember.

3 Q. B's or A's?

4 A. I don't recall.

5 Q. Okay. And where did you go to law school?

6 A. Baylor.

7 Q. And when did you start at Baylor?

8 A. '74.

9 Q. And when did you graduate?

10 A. When did I start law school?

11 Q. Yes, ma'am.

12 A. '74, graduated in '77.

13 Q. And do you recall what your grade point average
14 was there?

15 A. No, sir.

16 Q. Were you on the mock team or did you have any
17 extracurricular activities at Baylor there, law school?

18 A. Other than the law school?

19 Q. Yes, ma'am.

20 A. No, none other than the law school courses.

21 Q. Did you do debate or do --

22 A. I don't think they offered debate in the law
23 school. We had a mock trial program through the law school
24 that we all practiced in, practice court.

25 Q. Did you do that?

1 A. Yes.

2 Q. Did you represent the school in tournaments or --

3 A. No.

4 Q. Just participated in it?

5 A. Yes.

6 Q. And when did you take the bar exam?

7 A. '77. 1977.

8 Q. Did you pass it on the first try?

9 A. Yes, I did.

10 Q. What did you make?

11 A. I don't remember. I don't remember.

12 Q. Was it in the 80s or 70s?

13 A. I don't recall.

14 Q. Okay. Have you done any post-law graduate work
15 like doctors of laws or J -- LLM or --

16 A. No --

17 Q. -- anything like that?

18 A. -- I have not.

19 Q. Have you taken any courses? And I'm not talking
20 about CLE. We'll get to that a minute. But just formal
21 studying.

22 A. No.

23 Q. Have you ever taught in a law school?

24 A. No.

25 Q. Have you ever taught anywhere?

1 A. No.

2 Q. Okay. Have you ever written anything?

3 A. No.

4 Q. Have you ever published?

5 A. No.

6 Q. In law school did you take any special courses
7 with regard to city management, city law, municipal law,
8 things that would represent what you do for the City of
9 Terrell here today?

10 A. Not that I --

11 Q. And I don't mean contracts and torts and your
12 basic procedure classes, but sometimes there are special
13 classes, as you know, you can take that --

14 A. I believe I took a class in municipal law.

15 Q. Who was your professor? Do you know?

16 A. I don't recall. And I'm not even sure that's
17 exactly the way the class was titled, but --

18 Q. Okay. Have you ever spoken at any seminars with
19 the Texas or Dallas Bar Association or anything like that?

20 A. No.

21 Q. Okay. Is your CLE up to date?

22 A. Yes.

23 Q. What areas do you concentrate on in your CLE?

24 A. Municipal, real estate, probate.

25 Q. What do you specialize in when you're not -- I'm

1 sorry. Were you finished?

2 A. Yes, I was finished.

3 Q. Likewise, one of my housekeeping rules I didn't
4 get to earlier, I will make a very conscientious effort to
5 never interrupt you in an answer, and if you'll make the
6 same effort to not interrupt me on a question. That way the
7 court reporter doesn't go crazy.

8 A. Agreed.

9 Q. And I won't be disrespectful, and I'll give you a
10 chance to answer fully. Give me an opportunity to at least
11 get the question out. And I may break that rule once or
12 twice. If I do, just tell me about it and I'll apologize
13 and we'll start over. Fair enough?

14 A. Fair.

15 Q. What is your specialty in your private practice?

16 A. I'm not board-certified as to any specialty.

17 Q. Okay. Aside from board certification, what areas
18 do you -- are your strengths?

19 A. I practice in, of course, the area of municipal
20 law. I practice in real estate. I have probate in my
21 practice, and then some family.

22 Q. And do you do -- do you have a specialty -- not
23 certification, but -- Let's use the word "concentration."
24 Do you do a lot of litigation?

25 A. Some.

1 Q. Okay. What kind of litigation do you concentrate
2 in?

3 A. I do not have a large majority of my practice
4 consisting of formal litigation. Generally, it's -- I have
5 an office practice, which sometimes does require courtroom
6 work. But as far as long protracted trials, no, I don't do
7 that.

8 Q. But you do it enough to know the cost of it --

9 A. Yes.

10 Q. -- to the client?

11 A. Yes.

12 Q. And the risk that one undertakes and the expense
13 one undertakes when they try a lawsuit?

14 A. Correct.

15 Q. You're aware of that fact. Have you ever been
16 sued before?

17 A. No.

18 Q. Have you ever had a claim filed against you that
19 did not result in a lawsuit that was settled out of court?

20 A. Not that I recall.

21 Q. Have you ever had a grievance filed on you?

22 A. No.

23 Q. Ever had a threat of a grievance upon you that was
24 resolved without the actual filing of the grievance?

25 A. Not that I recall.

1 Q. Have you ever had a letter from a client
2 complaining in any way about your representation of the
3 client?

4 A. No.

5 MS. MORALES: And just to clarify if she's
6 never been sued, I would imagine that means other than this
7 lawsuit itself.

8 MR. NACOL: Right.

9 Q. (MR. NACOL) Have you ever sued a client?

10 A. No.

11 Q. Okay. Have you ever given your deposition before
12 today? I think I've already asked that. I'll ask again.

13 A. I'm trying to recall. I don't think so. I've
14 been called to testify in trials, but not give a deposition,
15 I don't believe.

16 Q. What trials have you been called to testify in?

17 A. When I was serving as municipal judge I would be
18 called to testify with respect to magistrate's warnings,
19 that type of thing.

20 Q. Okay. Aside from that?

21 A. I think that's it.

22 Q. When you first got out of law school, where did
23 you first go to work right out of law school?

24 A. I went to work in Terrell.

25 Q. Okay. And as city attorney?

1 A. No.

2 Q. In what capacity?

3 A. Private practice.

4 Q. Okay. And did you form a professional corporation
5 at once or did that come later?

6 A. That came later.

7 Q. All right. So how long did you practice as a sole
8 practitioner?

9 A. I was in practice with my father. He was an
10 attorney here.

11 Q. Okay. What was his name?

12 A. Robert Ramsey.

13 Q. All right. And does he still practice or --

14 A. He died in 1988.

15 Q. And you took over the practice?

16 A. I formed my own practice at that point.

17 Q. Okay. Were you just an employee of him before you
18 formed --

19 A. Yes.

20 Q. When did you form your professional corporation?

21 A. Probably in 1988.

22 Q. Okay. And have you been the sole employee of your
23 company from that date to today?

24 A. Yes, sir.

25 Q. Have you ever had any shareholders during that

1 period of time?

2 A. No.

3 Q. Have you had other lawyers that worked for you
4 during that period of time?

5 A. No.

6 Q. Do you have any medical disabilities?

7 A. Not that I'm aware of.

8 Q. Or health problems?

9 A. No, sir.

10 Q. You've never had any drug or alcohol problems?

11 A. No.

12 Q. Do you use alcohol?

13 A. No.

14 Q. Teetotaler?

15 A. Maybe a glass of wine occasionally, but for the
16 most part, no. It gives me a headache.

17 Q. Do you take any prescription medications?

18 A. No.

19 Q. Any antidepressants or Prozac or --

20 A. No.

21 Q. -- anything like that?

22 A. No.

23 Q. Let me show you what's been marked heretofore as
24 Ramsey Exhibit 1 and ask if you can take a look at that and
25 identify that please for the court.

1 A. All right.

2 Q. Did you an opportunity to review that before
3 today?

4 A. I looked at it, yes.

5 Q. And you're a lawyer. You know what a subpoena
6 duces tecum is, don't you?

7 A. Yes.

8 Q. And we're here by agreement today, right?

9 A. Yes.

10 Q. Did you have an occasion to put together the
11 documents requested on the exhibit?

12 A. Yes.

13 Q. Will you produce them at this time?

14 MS. MORALES: Yeah. And just want to make
15 just a formal objection that we were served with notice of
16 the notice on Friday, and the Federal Rules provide for 30
17 days. We have given --

18 MR. NACOL: I understand that.

19 MS. MORALES: -- the documents that we have,
20 and we've done the objection, along with other objections.
21 There is also, you'll see, attached to the back of the
22 formal response a privileged log of documents that have been
23 withheld based on the attorney-client privilege and the work
24 product privilege.

25 MR. NACOL: Okay.

1 MS. MORALES: And that's back here in case
2 you want it.

3 MR. NACOL: Okay.

4 MS. MORALES: And I'll give you a copy of
5 that, too.

6 THE WITNESS: Okay.

7 Q. (MR. NACOL) The items that you are retaining under
8 a privilege law, Mrs. Ramsey, are these items that arose
9 after the lawsuit was filed?

10 A. What was the date that the lawsuit was filed?

11 MS. MORALES: And her -- the ones that she's
12 withholding, and you'll note that in the responses, is 70
13 through 74. The rest will be out of Mr. Rounsavall's
14 information. There was the state court litigation and there
15 was the --

16 Q. (MR. NACOL) Your answer was executed on the 14th
17 of June, so probably in May, filed in May --

18 A. Now, is that the state litigation --

19 Q. -- 2001?

20 A. -- or federal litigation?

21 Q. That's your answer to this federal lawsuit.

22 MS. MORALES: Yeah, but there was also the
23 state litigation.

24 THE WITNESS: But there was state litigation
25 that was filed prior to that.

1 Q. (MR. NACOL) Okay.

2 A. And so if you would just be specific as to which
3 litigation.

4 Q. What I'm asking you is, do any of these documents
5 occur before any litigation was filed against you or the
6 city?

7 MS. MORALES: The only information I have
8 with me right now is for federal, and I think that was first
9 filed November 6, 2000. But I know that the state court --
10 Well, actually your pleadings don't say when the state court --

11 THE WITNESS: I just don't remember when the
12 state court was filed.

13 MS. MORALES: Yeah.

14 Q. (MR. NACOL) So July --

15 A. There were two July items.

16 MS. MORALES: Like I said, the first two are
17 for her and the next -- I put the whole privilege log --

18 MR. NACOL: Okay.

19 MS. MORALES: -- together and the other ones
20 are for Defendant Rounsavall.

21 Q. (MR. NACOL) Okay. So this is letters to and from
22 your lawyer after the suit was filed, right?

23 A. Yes.

24 Q. Let's go off the record for about five minutes
25 here.

1 (Exhibit Nos. 22 through 31 marked)

2 All right, ma'am. I have shown you Exhibit No. 6, No.
3 7, No. 8, No. 9, No. 10, No. 11, No. 12, No. 16, No. 19, No.
4 20, No. 21, and from your production 22 through twenty --
5 23, 24, 25, 26, 27, 28, 29, 30 and 31. As to those
6 documents I just enumerated, can you identify those
7 documents for the court?

8 A. Yes. Do you want me to do them individually?

9 Q. Well, I just want to authenticate. If we get a
10 stipulation, that's fine with me.

11 A. I mean, I can stipulate they came from my file or
12 letters sent to me or copies.

13 Q. Business records of the city?

14 A. Or copies of the ordinances of the city.

15 Q. Okay.

16 A. Yes.

17 Q. All right. And they're true and correct copies of
18 the original documents?

19 A. As far as I know.

20 Q. Okay. Now, let's look at the ones we have a
21 problem with and see what we can get on those. All right.
22 As to Exhibit 4, you can identify the first page, but you
23 can't identify the next few pages of Exhibit No. 4?

24 A. The only thing that I had in my file on Exhibit
25 No. 4 would be a copy of the first page.

1 Q. Okay. Look at the rest of the pages and see if
2 they in any way refresh your recollection as -- or if you
3 have any reason to doubt that is the full and complete
4 application.

5 A. I don't have any reason to doubt it, but I don't
6 know -- I can't tell you with certainty that it's the full
7 application.

8 Q. Okay. And that's number what?

9 A. No. 4, I believe you said. Yeah, No. 4.

10 Q. And Mr. Rounsavall can do that?

11 MS. MORALES: I --

12 MR. NACOL: Go ahead.

13 MS. MORALES: I think -- I don't know that
14 any of them had the full application in the file, to be
15 honest with you.

16 MR. NACOL: None of the city had the
17 application?

18 MS. MORALES: Not the full application in the
19 file, because I didn't even see it in Mr. Rounsavall's file.

20 Q. (MR. NACOL) It's possible. Okay. Now, you never
21 had in your file Exhibit 3, which was the Texas Alcoholic
22 Beverage Commission Retailer's Off Premise Permit for Handy
23 No. 1 --

24 A. No, sir.

25 Q. -- to Mr. Beeler? Okay. You do not have in your

1 file a copy of the letter from the City of Terrell under the
2 city secretary's signature submitting the original permit?

3 A. No, sir, I do not have a copy of that letter.

4 Q. Okay. Have you ever seen it before?

5 A. No, sir.

6 Q. You've never seen that document?

7 MS. MORALES: Are you talking about the first
8 or second page?

9 Q. (MR. NACOL) Take a look at that very closely,
10 because I want to make sure you --

11 A. I do not recall ever seeing a copy of the first
12 page. I have seen the second.

13 Q. Okay.

14 A. But not the first. I haven't seen the letter.

15 Q. We'll go over that in a second later in more
16 detail. You never saw the -- You can't identify No. 17,
17 your attorney's letter to a number of parties?

18 A. The letter shows that I received a copy, but I
19 don't recall having it in my file.

20 Q. Okay. Do you ever recall seeing this letter, No.
21 17?

22 A. I can't say that I have or I haven't, but I didn't
23 have it in my file to refresh my memory.

24 Q. And No. 18, the letter from the city secretary,
25 John Rounsavall, to Mr. Maloney at the TABC -- you never saw

1 that letter?

2 A. Not that I recall. Everything that I have was in
3 my file and was furnished to our attorney to -- under
4 production.

5 Q. Well, okay. And are you telling the jury today
6 under oath that you have no recollection of any kind -- of
7 ever seeing or reading the January 4th, '98 correspondence
8 issued -- as a salutation to you as the city attorney from
9 my client?

10 A. No, sir, I don't recall ever seeing this.

11 Q. How about the note attached with the second
12 letter, handwritten letter?

13 A. Not that I recall.

14 Q. Okay. You're not saying whether you ever got that
15 or you're saying you don't recall it?

16 A. No, this was dated in January of '98, and I don't
17 recall getting it.

18 Q. Okay. I mean, are you telling the jury you know --
19 you have personal knowledge here today that you never
20 received that or you don't have a recollection whether you
21 did or not?

22 MS. MORALES: Take your time and read it if
23 you want.

24 MR. NACOL: Okay. I'm going to object to the
25 sidebar remarks. A violation, prompting the witness.

1 Q. (MR. NACOL) Go ahead.

2 A. I can tell you that if -- that if I had gotten
3 this letter it should have been in my file and I -- it is
4 not in file and I don't have an independent recollection of
5 getting it.

6 Q. Okay. Now, how long -- what are your chores and
7 duties on behalf of the City of Terrell with regard to the
8 approval or disapproval of any application by any applicant
9 for a liquor license in the city?

10 A. Would you restate the question?

11 Q. What are your chores and duties as city attorney
12 in the decision-making process of whether any person is
13 granted a license to sell wine and beer -- off-premise beer?

14 A. I'm not aware that I have any specific duties in
15 that regard.

16 Q. Okay. What general duties do you have?

17 A. With regard to what?

18 Q. Whether or not an applicant can sell alcohol in
19 Terrell, Texas.

20 A. Any decisions that -- or any duties, I should say,
21 that I might have are on a case-by-case basis and upon
22 request of the city.

23 Q. Okay. So you have no directives from the city nor
24 do you have any internal controls, checklists or other
25 mechanisms that you go down in your decision on whether

1 someone sells alcohol or not?

2 A. That is correct.

3 Q. Okay. How do you determine on a case-by-case
4 basis whether someone gets to sell alcohol in the city?

5 A. Restate that question, if you would.

6 Q. How do you determine on a case-by-case basis if an
7 applicant gets to sell alcohol in Terrell?

8 A. I'm not asked to make that decision on a
9 case-by-case basis. My duties as city attorney are to
10 advise the city upon request as to specific situations. I
11 don't have any specified duties with regard to each
12 particular application or license.

13 Q. Well, a lot of input was put into Mr. Beeler's
14 case, wasn't it?

15 A. From whom?

16 Q. By you.

17 A. Somewhat.

18 Q. Okay. What was your -- what are your guidelines --
19 what were your guidelines in this case, the Beeler case,
20 with regard to whether or not this applicant should or
21 should not sell alcohol and be permitted to sell alcohol in
22 the City of Terrell?

23 A. I was asked to review copies of the ordinances of
24 the City of Terrell.

25 Q. Who asked you to do that?

1 A. John Rounsavall.

2 Q. When did he do that?

3 A. I don't recall the date.

4 Q. What year did he ask you to do it?

5 A. I would have to go back and look at the date of
6 the application to be certain.

7 Q. Okay. Go ahead. Here are the exhibits.

8 A. It appears he applied in January of 2000, so it
9 would be sometime after that date.

10 Q. And the city issued a beer and wine permit to Mr.
11 Beeler on January the 11th of 2000, did it not?

12 A. I would have to look and see in the exhibits if
13 they did or not.

14 Q. Go ahead and look. It's in there.

15 (Pausing)

16 A. Would you restate your question again?

17 Q. Tell the jury when the city initially granted Mr.
18 Beeler's application and, in fact, did issue a beer and wine
19 permit to Mr. Beeler.

20 A. I see in the exhibits that there was a wine and
21 beer retailer's off-premise permit issued by the Texas
22 Alcohol Beverage Commission in October of 1999 expiring
23 October of the year 2000.

24 Q. Okay. I agree with you. Would you answer my
25 question? I think it's in the back.

1 MS. MORALES: I think you had that.

2 THE WITNESS: I don't know if he took that
3 back or not. Here it is. Okay. I've got it.

4 Q. (MR. NACOL) Does that refresh your reflection of
5 whether January the 11th of 2000 --

6 A. Yes.

7 Q. -- such a certificate was issued?

8 A. Yes, I found a wine and beer retailer's
9 off-premise permit issued by the City of Terrell on January
10 the 11th of the year 2000.

11 Q. And who executed that?

12 A. John Rounsavall, city secretary.

13 Q. The same person that came to you and asked for
14 your counsel sometime in early January of 2000, correct?

15 A. I'm not for sure it was early January of 2000.

16 Q. Okay.

17 A. Sometime after the date of the filing of the
18 application.

19 Q. Well, we know if the application was filed in
20 January of 2000 and if the certificate was issued on the
21 11th of January of 2000, it had to be in those 11 days,
22 didn't it?

23 A. Possibly, but not necessarily.

24 Q. Okay. So he may have come to you earlier,
25 correct?

1 A. No, he would have had no reason to come to me
2 earlier, because the application was not filed, I presume,
3 until January.

4 Q. But an inquiry had been made as early as January
5 the 4th of 1998 to you with regard to this very permit, had
6 it not?

7 MS. MORALES: I'm going to object. It
8 assumes facts not in evidence.

9 THE WITNESS: I don't recall anything before
10 the year 2000 with regard --

11 MR. NACOL: So you --

12 THE WITNESS: -- to Mr. Beeler.

13 Q. (MR. NACOL) Yes, ma'am. You don't recall Exhibit
14 No. 2?

15 A. No, sir.

16 Q. And you don't recall the last page of Exhibit No.
17 2 dated January the 29th of 1998, which would be 25 days
18 later, where Mr. Beeler, at least this exhibit reflects,
19 states -- refers to the previous leather and a map and
20 defines more specifically where the store is?

21 A. No, sir.

22 Q. You don't recall any of that?

23 A. No, sir, I don't.

24 Q. And the map contained therein?

25 A. No, sir.

1 Q. Okay. What is your best recollection of when John
2 Rounsavall instructed you to do some research on this issue?

3 A. What is the date of that recollection?

4 Q. Yes.

5 A. I don't recall a date.

6 Q. Okay. Could it have been in 1998?

7 A. No, sir.

8 Q. Could it have been in 1999?

9 A. No, sir.

10 Q. So it had to be in 2000?

11 A. Sometime in 2000.

12 Q. And if it was not in 1999 and it was sometime in
13 2000 and if the permit was granted on the 11th of January,
14 it would have to be between January 1st and January 11th,
15 wouldn't it?

16 A. I don't recall the date.

17 Q. Okay. It could have been in 1999?

18 A. No, sir, but it was not -- I don't recall having
19 any recollection of any questions regarding Mr. Beeler until
20 2000 after the application was filed.

21 Q. Okay. And that was filed in January of 2000,
22 right? We've already been down that, right?

23 A. Yes, sir.

24 Q. And the city gave him a permit on the 11th, right?

25 A. According to the records, yes.

1 Q. Okay. So can you tell the jury or the judge
2 mathematically how you could have had your conversation with
3 John Rounsavall at any other time except January 1st through
4 January the 11th of 2000?

5 A. No, sir, I can't.

6 Q. Okay. Can we assume then that's likely when it
7 occurred?

8 A. I don't recall when it occurred.

9 Q. Okay. Tell the jury what John said to you in that
10 conversation.

11 A. That -- he asked me to review the ordinances --

12 Q. Yes, ma'am.

13 A. -- of the City of Terrell with regard to alcohol
14 beverage in municipal areas -- residential areas. I'm
15 sorry.

16 Q. Okay. He asked you to review the ordinances of
17 the City of Terrell with regard to residential areas?

18 A. Yes, sir.

19 Q. You recall that very specifically, right?

20 A. No, sir, I don't recall it specifically.

21 Q. But conceptually you recall it?

22 A. I remember looking up the ordinances.

23 Q. Okay. What else did he ask you to do?

24 A. Nothing that I recall.

25 Q. You don't recall anything else he asked you to do?

1 A. No, sir.

2 Q. So did he ask you generally to look up every
3 ordinance in the whole City of Terrell or just the ordinance
4 with regard to residences?

5 A. With regard to alcoholic beverages --

6 Q. All --

7 A. -- sale of alcoholic beverages in residential
8 areas.

9 Q. In residential areas?

10 A. Yes, sir.

11 Q. He did not ask you with regard to any other areas?

12 A. I don't recall.

13 Q. Can you tell the jury what you did in that interim
14 period between when that request was made by the city
15 secretary and the date the permit was issued? What
16 physically did you do?

17 A. Could you restate the question? I don't
18 understand.

19 Q. Tell the jury what you researched, what you read,
20 who you talked to. What did you do? What was your conduct
21 in furtherance of that request of the city secretary, John
22 Rounsavall?

23 A. I would assume that I looked in the code of
24 ordinances for the City of Terrell.

25 Q. The what?

1 A. Code of ordinances.

2 Q. Okay.

3 A. That's where all our ordinances are placed in the
4 code book.

5 Q. Yes, ma'am.

6 A. And looked at those. And other than that
7 specifically, I don't recall doing anything.

8 Q. Do you recall whether John Beeler ever discussed
9 it with you, called you or tried to communicate with you in
10 this period of time?

11 A. Mr. Beeler came to my office on several occasions.
12 The exact dates I don't recall.

13 Q. How many times?

14 A. Several. Probably two to three.

15 Q. Did you speak to him?

16 A. Yes.

17 Q. Each time?

18 A. I know that I spoke to him on two to three
19 occasions.

20 Q. What did you say to him on the first occasion?

21 A. I don't remember specifically.

22 Q. What did he say to you?

23 A. Stated that -- had questions with regard to the
24 application that he had filed.

25 Q. What kind of questions?

1 A. I don't remember specifically what he asked me.

2 Q. Did he talk to you about Ben Gill Park at Ninth
3 Street and Collette? Do you have a recollection of that?

4 A. No.

5 Q. Did he have any discussions with you about being
6 300 feet from a park, even though a school or church or a
7 hospital is not around?

8 A. Not that I remember.

9 Q. Did he ask you if a school owns a park if it's
10 part of the school?

11 A. Not that I remember.

12 Q. What do you remember that he said to you?

13 A. I don't remember anything specific.

14 Q. Okay. What was the tenor of the conversations the
15 second time he came to talk to you?

16 A. It was on the same subjects, about the -- about
17 sales of alcoholic beverages. It seemed as if he wanted
18 just general information, and I believe we furnished him --
19 I furnished him copies of the ordinances.

20 Q. How long did that meeting last?

21 A. I don't remember. It was not long.

22 Q. When was that meeting?

23 A. I don't remember.

24 Q. How long did the first meeting last?

25 A. He was probably there about -- between 15 and 30

1 minutes each time. Maybe not that long, but --

2 Q. And the third time, when did that occur?

3 A. And I'm not sure there was a third time.

4 Q. Okay.

5 A. He just -- he came -- He never made appointments.

6 He just came to the office, and if I was available, I was

7 happy to see him, see if I could assist him.

8 Q. Is it your testimony under oath here today, ma'am,

9 that he never called and made appointments with your

10 secretary --

11 A. No that I recall.

12 Q. -- April? And that he never made appointments

13 with anyone else here or called you in advance to establish

14 a specific time for an appointment?

15 A. Not that I know of.

16 Q. Okay. What research did you do between early 2000

17 before the 11th on the issues -- You say you looked at the

18 ordinances. What were your findings?

19 A. The findings were the -- what was listed in the

20 ordinances, what was the laws of the City of Terrell.

21 Q. Okay. What was your initial finding?

22 A. With regard to what?

23 Q. Whether or not the application should be granted.

24 A. I'd refer to the ordinances, if you have them.

25 Q. Yeah, they're right there. They're in the

1 exhibits.

2 (Pausing)

3 I'm talking about now in January of 2000, not anytime --
4 not February, March or April, just between the time he came,
5 filed the application and the time it was granted on the
6 11th. That's all I'm talking about.

7 A. Well, I don't know that I -- I don't know that I
8 met with him and I don't know that I made any kind of ruling
9 or gave any kind of -- gave any kind of opinion as to the
10 ordinances during that period of time.

11 Q. Do you not have a recollection, ma'am, that it was
12 your finding that the property was within 1,000 feet of an
13 athletic field or a day care center and, therefore, it could
14 not be granted?

15 A. Well, I notice that on March 17th I wrote a letter
16 to your firm, March 17th of 2000, that said the location
17 appeared to be in violation of the city ordinance.

18 Q. Objection, nonresponsive. Move that it be
19 stricken. Listen to my question. Between January 1 and
20 January 11 of 2000, did you not have a finding that it was
21 within 1,000 feet of an athletic field or day care center?

22 A. No, sir, not that I recall.

23 Q. And you're sure of that?

24 A. No, I'm not sure of that, because I am not -- I
25 don't remember on the 11th -- between January 11th or the

1 first of January, whether I gave any ruling or was asked to
2 give any opinion as to the interpretation of the ordinance.
3 I cannot say that with certainty.

4 Q. In point of fact, Mike Wortham sent you a letter
5 in that period of the very first week, within three days of
6 the application, itemizing cases under law establishing that
7 an athletic field or day care center was irrelevant to this
8 proposition, did he not?

9 A. Not that I recall.

10 Q. Okay. Do you recall at anytime taking a
11 subsequent position with regard to the application?

12 A. Yes, sir.

13 Q. All right. Before we get to that, let me ask you
14 this. Do you think that Ordinance 1939 was a reasonable
15 basis upon which to deny an application based on his
16 property being within 1,000 foot of an athletic field or day
17 care center?

18 MS. MORALES: Objection, calls for a legal
19 conclusion.

20 THE WITNESS: All right. Restate your
21 question, please, sir.

22 Q. (MR. NACOL) Do you feel that Ordinance 1939
23 precludes Mr. Beeler from his license because his property --
24 the applicant's property is located within 1000 foot of an
25 athletic field or day care center?

1 A. The ordinance states that if it was located within
2 300 feet of a church, a hospital or within 1000 feet of a
3 public school or other educational institution, then it
4 would not be allowed.

5 Q. Did that statute exist on January the 1st of 2000?

6 A. Yes, sir.

7 Q. Okay. And is it your position today that -- Tell
8 the jury how the location of his property violates that
9 particular -- Strike that. Do you believe sitting here
10 today that his property violates that ordinance?

11 A. Mr. Beeler furnished information to our counsel
12 that showed that he did not derive over 50 percent of his
13 income from sales of alcoholic beverages, which would except
14 him from that location distance requirement.

15 Q. Are you referring to Ordinance 1939 or are you
16 referring to a different ordinance?

17 A. I think I'm referring to the alcoholic beverage
18 code, which --

19 Q. Well, I'm talking about --

20 A. -- of course, is state law,

21 Q. -- the ordinance of the City of Terrell, 1939.
22 That's what I'm referring to.

23 A. Restate your question, please.

24 Q. Did you in January of 2000 opine, believe or
25 disclose to any party that Mr. Beeler's application should

1 not be granted because it was within 1000 thousand foot of
2 an athletic field or day care center?

3 A. No, sir, not in January of 2000.

4 Q. Because there's no day care center there, is
5 there?

6 A. In what location?

7 Q. Within 1000 foot of him.

8 A. I don't recall. I don't have the measurements in
9 front of me.

10 Q. And there's no public school within 1000 foot, is
11 there?

12 A. There's not a public school, but there's public-
13 owned property. Property that's owned by a public school, I
14 should say.

15 Q. There's no public school physically sitting on any
16 area within 1000 foot of his property, is there?

17 A. There's a -- our ordinance states other
18 educational institution, and Terrell Christian Academy was
19 located within those distance --

20 Q. That's a private school, isn't it?

21 A. It's a private school.

22 Q. And that doesn't apply to this statute, does it?

23 MS. MORALES: Objection, legal conclusion.
24 You can answer.

25 THE WITNESS: That was subject to

1 interpretation. At the time we believed it did.

2 Q. (MR. NACOL) Can you tell the court and jury any
3 legal basis, case, statute, stare decisis, any basis that a
4 private school is a public school under the terms of that
5 statute?

6 A. It's my understanding it turns on whether or not
7 they receive any public funding.

8 Q. Okay. Was there any public funding --

9 A. We were not aware --

10 Q. -- for this academy?

11 A. We did not know at that time.

12 Q. Did you make an inquiry?

13 A. No, sir.

14 Q. Why?

15 A. Because Mr. Beeler, through his counsel, furnished
16 us information that would make that matter moot.

17 Q. But about 120 days later, right?

18 A. I don't recall when they furnished that
19 information to us.

20 Q. Well, let me refresh your recollection. That
21 occurred on -- Let me see the exhibits.

22 A. Which ones?

23 Q. Let me show you Exhibit No. 11 and ask if --
24 you've identified and ask if that refreshes your
25 recollection of when that occurred.

1 A. March of 2000.

2 Q. March the 21st of 2000 --

3 A. Yes, sir.

4 Q. -- correct?

5 A. Exactly.

6 Q. And that's about 119 days after the application,
7 right?

8 A. I'm not sure of --

9 Q. Until today?

10 A. I'm not sure of the exact number of days.

11 Q. Okay. Now I'll reask the question again. Ma'am.

12 You didn't have that information at that time, did you? You
13 didn't have the information on Exhibit -- You stated that
14 the reason he was exempted is because of Exhibit No. 11,
15 correct?

16 A. I stated that this information was furnished to us
17 in -- I believe in March.

18 Q. Can you tell the jury -- That's -- that actual
19 data was submitted then, but the actual information was
20 submitted much earlier, wasn't it?

21 A. Not that I can recall. I think this was the first
22 we had of this.

23 Q. You didn't have a letter from him earlier, from
24 Mike Wortham, stating --

25 A. I don't believe we did.

1 Q. Let me see that letter. Let me see the rest of
2 the exhibits. Ms. Ramsey, is it true or not that you took
3 five different positions on the law with regard to Mr.
4 Beeler's application before it was officially granted?

5 A. Not that I'm aware of.

6 Q. Did you not at one time take the position that the
7 property was within 1000 foot of an athletic field or a day
8 care center? Yes or no?

9 A. I remember the matter was discussed. I don't
10 remember the position.

11 Q. Okay. Give me a second here.

12 MS. MORALES: Do you mind if we go off the
13 record for a minute?

14 MR. NACOL: Sure. Yeah. Let's take about a
15 three-minute -- five-minute break. That's fine..

16 (Recess from 1:41 to 1:47)

17 Q. (MR. NACOL) Back on the record. Ma'am, just
18 generally what I'm really trying to get at is to discover
19 from you whether or not it is your position that you, on
20 behalf of the city, and Mike Wortham, on behalf of Mr.
21 Beeler, had multiple and repeated conversations with regard
22 to multiple statutes in trying -- during the process in
23 which Mr. Beeler was trying to get his license. Did that
24 happen or not?

25 A. I had several conversations with Mr. Wortham.

1 Q. And did you not take different positions in
2 several conversations?

3 A. We discussed several things and the different
4 aspects of the ordinance and what would apply in Mr.
5 Beeler's case.

6 Q. Why did y'all grant the permit initially?

7 A. Initially this came in to Mr. Rounsavall's office.
8 The way that the city handles these things is these are
9 handled through the office of the city secretary, and Mr.
10 Rounsavall serves as the city secretary. I don't see the
11 permits. I don't have any duties with regard to the
12 permits. They're not reviewed by me as city attorney. They
13 come in to his office and are handled just on a regular
14 basis.

15 Q. Right.

16 A. This came in as a change of address --

17 Q. All right. Would you show the jury --

18 A. -- and it was granted.

19 Q. -- where that came in as a change of address?

20 A. Either the memo dated in February that I believe
21 was in the exhibits that you --

22 Q. All right. Go ahead. Take a look at them.

23 MS. MORALES: Are these --

24 MR. NACOL: Yeah.

25 MS. MORALES: -- separated for a reason?

1 MR. NACOL: Yeah.

2 THE WITNESS: Okay. In February -- February
3 23rd of 2000 I received a memorandum from John Rounsavall
4 regarding an alcoholic beverage permit for Handy Mart No. 1.
5 Mr. Rounsavall's memo states that this was presented as an
6 address change only, and subsequent to it being presented
7 and him signing that he came into the knowledge that it had --
8 it was a different address rather than a renewal. And for
9 that reason --

10 Q. (MR. NACOL) What does "address change only" mean?

11 A. Well, these two locations -- Mr. Beeler previously
12 operated Handy Mart at another -- at an adjoining location.

13 Q. 307, right?

14 A. Ninth Street.

15 Q. Yes.

16 A. And then the other location was 305.

17 Q. Right next door, right?

18 A. Correct, they're right next door to each other.

19 Q. Right.

20 A. And apparently, according to Mr. Rounsavall, he
21 presumed this was a renewal, same license, same location.
22 Subsequent to that he discovered it was the next-door
23 location. And at that point, that's when I was -- became
24 aware of the situation, and that was not until February of
25 2000.

1 Q. All right. And that's what is reflected on
2 Exhibit No. 22, correct?

3 A. Yes, sir.

4 Q. Show the jury the application that supports this
5 memorandum that --

6 A. I don't have any application.

7 Q. There isn't one, is there?

8 A. I don't know if one exists or not, but I --

9 Q. Well, let's go to --

10 A. -- don't have one.

11 Q. -- the application. Let's look at the
12 application. All right. Look at Exhibit No. 4 and point
13 out to the jury where that is simply an address change -- I
14 mean, a renewal as set out in Mr. Rounsavall's memorandum.

15 A. And your question again, please?

16 Q. Where is a renewal as opposed to an application
17 for a new license at a new location?

18 A. I don't know that it states either, either a new --
19 application for a new location or a renewal.

20 Q. Well, please look on the first page, application
21 for retailer's permit or license --

22 A. Correct.

23 Q. -- on the first page, and tell the jury what
24 address is set out down there.

25 A. It says 305 Ninth.

1 Q. That's not where he was, was it?

2 A. I don't know where he was.

3 Q. Well, didn't you just tell the jury a moment ago
4 he was at 307?

5 A. Yes, sir.

6 Q. And you corrected me and said Ninth Street. You
7 knew exactly where it was.

8 A. Both locations are on Ninth Street.

9 Q. All right. But 30 --

10 A. They're next door to each other.

11 Q. 307 is not 305, is it?

12 A. No, it's not.

13 Q. And so this city and you and Mr. Rounsavall knew
14 from the beginning of this process that it was a different
15 location, didn't you?

16 MS. MORALES: Objection, speculation.

17 THE WITNESS: No, sir, I did not.

18 Q. (MR. NACOL) All right. Tell the jury --

19 A. This application was not presented to me. It was
20 presented to John Rounsavall.

21 Q. Did you in your analysis even look at the
22 application?

23 A. The application was not presented to me.

24 Q. Did you request it?

25 A. No, sir, not that I recall.

1 Q. Did you ever go to Mr. Rounsavall and say, "I've
2 got to see an application before I can opine about its legal
3 authenticity"?

4 A. No, sir. I don't believe that was a question I
5 was asked to answer.

6 Q. Well, were you just asked to do whatever you could
7 do to get this thing delayed as long as possible?

8 A. Absolutely not.

9 Q. Well, then tell me why the permit -- if that -- I
10 mean, you know now looking at it that that application is
11 not for renewal, is it?

12 A. It just says application for a retailer's permit
13 or license. It doesn't say whether it's renewal or a new
14 location.

15 Q. Ma'am, it says 305, doesn't it?

16 A. Correct.

17 Q. That is a new location, isn't it?

18 MS. MORALES: Objection, asked and answered.

19 THE WITNESS: Under number 10 on page two of
20 two, it refers to the 307 Ninth. But as I said, I wasn't
21 asked --

22 MR. NACOL: Show me where you're pointing to,
23 ma'am.

24 MS. MORALES: It says right there.

25 Q. (MR. NACOL) And what is that column? Read the

1 first 10 words under number 10 to the jury.

2 A. "State employment for the past three years
3 beginning with your present employment," and it says, "From
4 March 1990 to the present convenience store owner 307 Ninth
5 Street, Handy Mart No. 1." And then it also shows Handy
6 Mart No. 1 on the first page at 305 Ninth Street, which I
7 must presume is how Mr. Rounsavall came to believe it was
8 not a new location.

9 Q. Do you have to make an application every year for
10 Do you have to renew your application with this form every
11 single year with the city?

12 A. I don't know. As I said, these forms are not
13 presented to me. I don't handle these forms. These are
14 handled in the office --

15 Q. You know you --

16 A. -- of the city secretary.

17 Q. You know you don't have to do that, don't you?

18 A. No, sir, I don't know.

19 Q. At any rate, on January the 11th of 2000 the city
20 did grant my client a license, didn't they? A permit.

21 A. Yes, sir, signed by John Rounsavall.

22 Q. Did John talk to you about that before he did it?

23 A. No, sir.

24 Q. Did he ever call you and tell you, "Don't worry
25 about all that research anymore. I granted a license"?

1 A. No, the first I heard -- This license apparently
2 was granted in January of 2000, and the first I heard from
3 Mr. Rounsavall with regard to Mr. Beeler was in February.

4 Q. Okay. So earlier when you testified between
5 January the 1st and the 11th, was that not your
6 recollection, that you were --

7 A. No, sir.

8 Q. -- that you were contacted in that time period?

9 A. No, sir. And I testified that I did not believe I
10 was contacted during that time.

11 Q. Okay.

12 A. The first I heard of this was in February from the
13 memorandum from John Rounsavall.

14 Q. And what happened between February and March with
15 regard to your research and analysis? What did you do?

16 A. As I testified earlier, I researched the city
17 ordinances and researched state law. That is all I can
18 recall that did I at this time.

19 Q. Okay. And did --

20 A. Oh, and I also spoke to Mr. Wortham. Sorry to
21 interrupt, but I also spoke to him.

22 Q. Right. And you spoke to him in when? February?

23 A. Whatever the letters -- I don't remember when Mr.
24 Wortham actually started calling me.

25 Q. And did you discuss with Mr. Wortham the city's

1 position in that period of time?

2 A. I would assume I did.

3 Q. Okay. And did he respond to you after that
4 discussion in the March 3rd, 2000 correspondence?

5 A. We had numerous conversations with Mr. Wortham.

6 Q. Do you know of any written correspondence prior to
7 that correspondence?

8 A. Not that I remember.

9 Q. Okay. Do you have a recollection of that being
10 your first written correspondence with Mr. Wortham on behalf
11 of Mr. Beeler?

12 A. I don't have any independent recollection, but I
13 presume it is, because the first line of the letter says he
14 now represents -- he represents John Beeler. So I guess
15 this is the first I had notice of his representation.

16 Q. And in that first paragraph he specifically and
17 expressly discloses to you that Mr. Beeler purchased this
18 building for \$100,000 on January the 12th in reliance on the
19 permit that was granted, doesn't it?

20 A. That's what the letter states.

21 Q. So you knew that. From this point in time forward
22 in the process, you had that knowledge, didn't you?

23 A. I had this statement. I don't --

24 Q. You had the representation --

25 A. Yes, I did.

1 Q. -- that he do that. And the purchase date follows
2 by one day the date of getting the permit, does it not?

3 A. According to this letter.

4 Q. So you knew that. You at least knew about that
5 representation, didn't you?

6 A. Correct.

7 Q. So for everything you did from now on, you did it
8 with the knowledge of those two representations, didn't you?

9 A. Based on his -- based on Mr. Wortham's
10 representations. I knew that the permit had originally been
11 issued January 11th of 2000, and I knew that Mr. Wortham
12 said he purchased the building.

13 Q. Did you have any reason to doubt that?

14 A. I had seen -- No, I didn't have any reason to
15 doubt it, but I had seen no evidence of it.

16 Q. You didn't drive by there and buy any whiskey or
17 anything, so you wouldn't know?

18 A. No, sir.

19 Q. And you couldn't have, because he didn't have his
20 permit, anyway, did he? All right. The second paragraph
21 says that it has come to Mr. Beeler's attention that you,
22 being Mary Gayle Ramsey, city attorney, was taking the
23 position it was unlawful to sell alcohol under Ordinance
24 1939 within 1000 feet of an athletic field or day care
25 facility. Do you recall discussing that with Mr. Wortham?

1 A. I don't recall it, but that's what the letter
2 says.

3 Q. Okay. Earlier you said that was not your initial
4 position in this deposition. Does this refresh your
5 recollection either way?

6 A. No, sir.

7 Q. So it could have been and you just don't recall
8 it?

9 A. I don't recall.

10 Q. Did you ever --

11 A. I know that's what the ordinance says.

12 Q. Would you show the jury where that ordinance
13 refers to a day care facility?

14 MS. MORALES: Here it is.

15 Q. (MR. NACOL) What is that exhibit number, for the
16 record, ma'am?

17 A. Let me be sure I'm reading from the right one.

18 Q. Let me see it. You're showing Exhibit No. 19 and
19 you're also looking at Exhibit No. --

20 A. I'm looking at Exhibit No. 21, 20 and 19.

21 Q. Okay. 19, 20 and 21, we'll keep them together
22 from now on.

23 A. Okay. And your question again?

24 Q. My question is, where does it refer to a day care
25 center in that ordinance?

1 A. The ordinances don't refer to a day care facility.

2 Q. All right.

3 A. They refer to a church, public hospital, public
4 school or other educational institution.

5 Q. Okay. Does that refresh your recollection then
6 with regard to your original discussion with Mr. Wortham
7 with regard to 1,000 foot of an athletic field or a day care
8 facility?

9 MS. MORALES: Objection, mischaracterizes the
10 testimony. You can answer.

11 THE WITNESS: No, sir.

12 Q. (MR. NACOL) Well, Mr. Wortham, in the next
13 letter, says there's no mention in the ordinance of a day
14 care center. Will you agree with me a day care center has
15 nothing to do with whether or not he gets alcohol?

16 A. Well, it's not in the ordinance. I'll agree with
17 you on that.

18 Q. Well, can you point the jury to another ordinance
19 or anything else under the laws in State of Texas or the
20 ordinances of the City of Terrell which will keep him from
21 having -- being entitled to a permit because of a day care
22 center?

23 A. Can we go off the record for a minute and let me
24 get them, to see the alcoholic beverage code to refresh my
25 memory?

1 Q. We're not going to break. I'm asking what your --
2 do you have any recollection --

3 A. If you're asking me do I have any recollection,
4 no, without going back to state law. And I don't have it in
5 front of me. All I have are the ordinances.

6 Q. Okay.

7 A. There's no mention of a day care facility in the
8 ordinance.

9 Q. That's right. And throughout the next five months
10 of negotiations with Mr. Wortham, you never found one, did
11 you? Or if you did, you never discussed it with him or
12 communicated it to him, did you?

13 A. I don't recall what -- Other than what's in the
14 letters, I don't recall what I communicated with Mr.
15 Wortham.

16 Q. Okay. Well, you will agree with me that Exhibits
17 19, 20 and 21 don't refer to a day care center, right?

18 A. 19 does not, 20 does not, and twenty -- 19, 21 and
19 20 do not.

20 Q. Okay. So at least to the extent of those
21 ordinances, there's no legal basis to deny a permit based on
22 a day care facility, correct?

23 A. From the ordinances.

24 Q. Okay. And where in the ordinances -- Point out
25 to the jury now where anywhere in 20 -- 19, 20 or 21 an

1 athletic field is a basis for a legal denial of a permit.

2 A. Not an athletic field.

3 Q. Okay. So would you agree with me that if your
4 original discussions with Mr. Wortham are accurately
5 reflected by this letter, there was no legal basis to take
6 that position, was there?

7 A. I don't -- I don't know that this letter
8 accurately reflects my discussions with Mr. Wortham.

9 Q. And I accept that. I'm asking you to assume that.

10 A. I can't say that I can assume that.

11 Q. Well, can you agree with us that any lawyer that
12 would deny a permit based on those two things -- that would
13 be an unreasonable position, wouldn't it?

14 A. No, sir, I can't say that.

15 Q. Okay. Tell what the legal basis is under 19, 20
16 or 21 which would make it reasonable to -- under the 14th
17 Amendment to deny a man his livelihood through the issuance
18 of a permit based on those two grounds?

19 MS. MORALES: Objection, legal conclusion.
20 You can answer.

21 THE WITNESS: You're presuming that my
22 opinion, whatever that opinion was at that time, denied him
23 his livelihood, and that was not the case.

24 Q. (MR. NACOL) Did Mr. Rounsavall want your opinion?

25 A. Mr. Rounsavall asked for my opinion.

1 Q. And he backed off on the permit until he got your
2 permit, didn't he?

3 A. Not necessarily.

4 Q. Did he withdraw that consent --

5 A. He withdrew --

6 Q. -- on multiple occasions?

7 A. He withdrew the consent based on the fact that the
8 original permit was issued based in error, because of the
9 way that -- of the location differentiation.

10 Q. We've already been down that road and I won't beat
11 that horse anymore. Mr. Wortham further states, "As a
12 result, there is no reason not to forward Mr. Beeler's
13 application for a permit to sell alcoholic beverages in the
14 State of Texas." He desires to open his store for business
15 on Tuesday, March the 7th, and he needs to sell alcohol. So
16 regardless of what happened afterwards, it happened with
17 your knowledge, that -- when he wanted to open and what he
18 wanted to do and how he wanted his livelihood. You had all
19 that knowledge, didn't you?

20 A. I had the knowledge of whatever Mr. Wortham gave
21 me in this letter.

22 Q. Okay. Do you have any basis to tell the jury that
23 Mr. Wortham would lie about his client wanting to make a
24 living and feed his children?

25 A. Oh, no, sir.

1 Q. Take a look at Exhibit No. 7, if you will. Now,
2 this is -- Where is the previous exhibit? Okay. Thank
3 you. That was March the 3rd. Now, this is two weeks later,
4 right? On March the 17th?

5 MS. MORALES: I think you put it
6 right here. That's the letter from Mr. Rounsavall.

7 THE WITNESS: Yes, sir.

8 Q. (MR. NACOL) And did you get a copy of that letter?

9 A. It shows that I got a copy at the bottom.

10 Q. And do you have -- you're aware that on behalf of
11 the City of Terrell this letter was sent to Mr. Beeler,
12 being a notice of protest of his permit, correct?

13 A. That's what the letter states.

14 Q. In the second paragraph Mr. Rounsavall states,
15 "The address stipulated in this application for renewal of
16 license does not meet" -- "does not appear to meet the
17 requirements of the city ordinance." Did you discuss this
18 with Mr. Rounsavall before he sent it?

19 A. I don't recall if we did or not.

20 Q. Well, this is -- you're talking about January -- a
21 little bit later. We're on March 14th now. That's six
22 weeks later.

23 A. Yes, sir.

24 Q. You didn't have any conversation with the city
25 that you represented with regard to whether or not this memo

1 should be sent?

2 A. I assume Mr. Rounsavall and I spoke, but you asked
3 me specifically if I recall, and I don't recall.

4 Q. But you think you probably did speak, didn't you?
5 One time in the six weeks --

6 A. Possibly.

7 Q. -- on this topic. Having known from that first
8 letter six weeks later that my client's purchase and
9 livelihood was going with your decision, you probably would
10 have said something to the folks, wouldn't you?

11 MS. MORALES: Objection, argumentative. You
12 can answer.

13 Q. (MR. NACOL) You'd have said something, wouldn't
14 you?

15 A. I would presume so, but I'm not sure.

16 Q. Okay. Did you agree with this protest?

17 A. Yes, sir.

18 Q. Okay. Why?

19 A. The address is stipulated. The 305 location did
20 not appear to meet the requirements of the city ordinance.
21 And as Mr. Rounsavall stated in this letter, the protest was
22 being filed pending the determination of compliance with the
23 ordinances.

24 Q. Tell the jury how 305 didn't comply.

25 A. Well, from the reading of the ordinances, it

1 appeared that it was -- the distance requirements were in
2 violation.

3 Q. Distance to what?

4 A. Distance to other educational institution, being
5 Terrell Christian Academy.

6 Q. Now, Mr. Beeler had had a permit next door for
7 many years, hadn't he?

8 A. At the 307 location?

9 Q. Yeah.

10 A. That location had been selling alcoholic beverages
11 for a number of years.

12 Q. Yeah. And was it in violation of the code?

13 A. At the time that the original permit was issued,
14 no, it was not.

15 Q. You ended up giving a new permit on that location
16 during this process, didn't you?

17 A. I don't know when another permit was issued for
18 that -- for that location.

19 Q. Were you asked to review any other permits for
20 307?

21 A. Not that I recall.

22 Q. Between January and April of 2000, is it your
23 sworn testimony that Mr. Rounsavall never discussed the
24 issuance of a permit at 307 with you?

25 A. I don't recall whether he did or not.

1 Q. Does the name Humberto Rodriguez hit a note with
2 you?

3 A. Hit a note in what respect, sir?

4 Q. 307 down the street.

5 A. The name sounds familiar, but I don't know as to
6 what context.

7 Q. How about Grady Lawson?

8 A. Yes, sir.

9 Q. Who is Grady Lawson?

10 A. I believe he's the owner of the property at 307
11 and was the landlord for Mr. Beeler.

12 Q. Okay. Did you talk to Grady Lawson in January to
13 April of 2000?

14 A. I spoke to Mr. Lawson once, and all other
15 correspondence I had with his attorney.

16 Q. Okay. And when you spoke with him the one time,
17 what did you discuss with him?

18 A. Mr. Lawson advised me that Mr. Beeler and he were
19 no longer landlord-tenant, and that Mr. Beeler was moving
20 next door, I believe he stated. And I'd already heard that
21 from Mr. Beeler.

22 Q. Did Mr. Lawson or Mr. Rodriguez ever have any
23 discussions with you with regard to granting a new license
24 at 307?

25 A. I don't know Mr. Rodriguez.

1 Q. So whatever happened with regard to the issuance
2 of that license, you weren't even consulted, were you?

3 A. I can't say that I wasn't consulted. I just don't
4 recall the specifics of the conversation. I think in the
5 discussions with regard to the lawsuit that Mister -- the
6 Rodriguez name came up as far as becoming the new tenant of
7 Mr. Lawson, and that's all I know about Mr. Rodriguez.

8 Q. Which would, of course, as a lawyer -- the city
9 attorney, would require a new permit, wouldn't it?

10 A. I presume.

11 Q. Owners doesn't have permits. Users have permits,
12 don't they?

13 A. I think that's correct.

14 Q. Whether they're tenants or whatever they are. The
15 person that's going to kill somebody on the road, if they
16 don't do it right, that's the one that has to get the
17 permit, right? The runner of the business, the owner of the
18 business, not just who owns the land.

19 A. I think that's correct.

20 Q. And certainly you wouldn't have granted a permit
21 right next door under all the same auspices to Humberto
22 Rodriguez without jumping through all the same hoops you
23 jumped through with Mr. Beeler, would you?

24 A. I would presume that Mr. Rodriguez, or whoever the
25 new tenant is --

1 Q. Yes, ma'am

2 A. -- went through the same procedures as Mr. Beeler,
3 filed it with the city secretary --

4 Q. Had the same scrutiny, right?

5 A. I would presume so.

6 Q. And if they didn't do that, that wouldn't be an
7 equal protection of the law, would it?

8 A. No, I can't say that. They're two separate
9 locations, and it's my understanding that the location where
10 Mr. Lawson owned the property has received a permit for many
11 years.

12 Q. What does that have to do with anything?

13 A. I believe they call it the grandfather protection.

14 Q. All right. Point out to the jury and the judge at
15 this time the grandfather statute in any ordinance in the
16 City of Terrell.

17 A. I'm sorry?

18 Q. Please at this time direct the judge of this case
19 or the jury to any city ordinance in existence that is
20 called a grandfather clause or authenticates the position
21 you've just stated.

22 A. I'd have to go through the ordinances to get it
23 for you.

24 Q. There is none, is there? You know there's none --

25 A. I don't know.

1 Q. -- don't you?

2 A. I don't know.

3 Q. "Grandfather" is just a word old politicians use
4 around the courtroom. It's not a legal premise, is it?

5 A. We've always relied upon it, and it's my
6 understanding other municipalities do the same.

7 Q. Okay. You relied on it in this case, and that's
8 why Humberto got his permit right away and Mr. Beeler
9 didn't, isn't it?

10 MS. MORALES: I'm going to object that it
11 misstates the evidence and --

12 THE WITNESS: I'm not aware --

13 MS. MORALES: -- assumes evidence.

14 THE WITNESS: I'm sorry.

15 MS. MORALES: You can answer.

16 THE WITNESS: I'm sorry, I'm not aware of
17 what -- how long it took Mr. Rodriguez to get his permit.

18 Q. (MR. NACOL) For whatever reason, Mr. Rounsavall
19 did not communicate with you with regard to Mr. Rodriguez,
20 did he?

21 A. I can't say he didn't communicate, but as far as
22 in-depth discussions, I don't recall.

23 Q. In point of fact, you have no single reflection of
24 one single thing he said to you at anytime with regard to
25 Mr. Rodriguez's application, do you?

1 A. At that point we were represented by Mr. Marshall
2 Jason Marshall, and discussions with regard to that between
3 Mr. Rounsavall and Mr. Marshall, I presume took place
4 between those two.

5 Q. Mr. Marshall did not represent Mr. Rodriguez from
6 the commencement, did he?

7 A. I don't know that he represented Mr. Rodriguez at
8 all. He was the attorney for the City of Terrell.

9 Q. Okay. All right. Mr. Rodriguez did not have an
10 attorney to file a simple application for a liquor license,
11 did he?

12 A. I don't know. You'd have to ask Mr. Rounsavall
13 who filed it on his behalf.

14 Q. And you'd have to ask him, too, wouldn't you,
15 because you don't know, do you?

16 A. No, I don't.

17 Q. Because he never discussed it with you, did he?

18 A. Not with me.

19 Q. Okay. If you'd look at Exhibit No. 8, please,
20 ma'am -- Oh, wait. First, hold back. On exhibit -- on the
21 previous exhibit number -- the last exhibit, No. 7, please
22 ma'am, if you would, please. The protest being filed
23 pending our determination of compliance. What was the
24 procedure for that determination of compliance? What were
25 your instructions or duties or obligations from Mr.

1 Rounsavall?

2 A. Research the ordinances, research state law and
3 whatever other information we needed in order to -- for him
4 to make that determination.

5 Q. Can you tell the jury why it took two and a half
6 months to get that process started?

7 A. No, sir.

8 Q. You knew from the beginning where he was in
9 January, didn't you?

10 A. I think that's subject to question. Mr.
11 Rounsavall stated that he -- it was represented to him that
12 it was the same location. Now, whether he was mistaken or
13 not, I don't know. You'd have to ask him.

14 Q. Both those locations will be 1000 foot of this or
15 that, wouldn't they? They're right next to each other,
16 aren't they?

17 A. Yeah, they're next to each other.

18 Q. Assuming that there was some ambiguity that I have
19 yet to see in this application, assuming there is, how would
20 that affect the research of whether there's a valid
21 application or not with regard to day care centers and
22 athletic field and educational institutions? I mean, how
23 would that be relevant at all?

24 MS. MORALES: Objection, legal conclusion.
25 You can answer.

1 THE WITNESS: I don't know that I understand
2 your question.

3 Q. (MR. NACOL) It wouldn't be relevant, would it?
4 There would be no relevance whether it was 305 or 307. The
5 same rules of laws would apply to both, would they not?

6 MS. MORALES: Same objection.

7 THE WITNESS: With regard to the two
8 locations --

9 Q. (MR. NACOL) Whether they are near a church or --

10 A. -- possibly yes, possibly no.

11 Q. So maybe one is 20 foot closer or something? Is
12 that what you're saying?

13 A. It would depend on what the distance requirements
14 were and whether either of those appeared to be in violation
15 of our ordinances.

16 Q. But y'all didn't make those delicate distinctions
17 in January, did you?

18 A. I wasn't asked to -- I wasn't asked to research
19 anything in January. As I stated, I didn't receive anything
20 and I don't believe the discrepancy in the application was
21 even determined until February.

22 Q. The discrepancy you're referring to is -- We've
23 been down this road, but still can you show the jury a
24 discrepancy in the application? I still --

25 MS. MORALES: Objection, asked and answered.

1 Q. (MR. NACOL) -- cannot see a discrepancy. I mean,
2 it's clearly filled out exactly like it's supposed to be
3 filled out, isn't it? Is this the form that's used for
4 renewals?

5 A. I don't know. You'd have to ask Mr. Rounsavall.
6 That's handled in his office.

7 Q. Okay. Have you never seen a renewal of an
8 application form?

9 A. Have I ever seen one?

10 Q. Yeah.

11 A. I don't know that I've ever seen one or not seen
12 one. They don't go through me. That's all handled at city
13 hall.

14 Q. Okay. Now, please look at Exhibit No. 8. I'm
15 sorry. Just a moment here. Excuse me. I apologize. Yeah,
16 Exhibit No. 8. Please take a look at that.

17 A. Okay.

18 Q. Now, who is that from?

19 A. That's a letter from me to Mr. Wortham in March.

20 Q. Okay. And this is a different position than an
21 athletic field or a day care center, isn't it?

22 MS. MORALES: I object. It misstates the
23 witness's testimony and mischaracterizes the evidence. You
24 can answer.

25 THE WITNESS: Would you repeat it?

1 Q. (MR. NACOL) Mr. Wortham had previously sent you a
2 letter that we've gone through indicating that he was trying
3 to respond to what he represents was your allegation that
4 there was a day care center or athletic field problem,
5 correct?

6 A. That's what his letter says.

7 Q. Now, you have written a letter to him indicating
8 that after reviewing the applicable ordinances now you've
9 got a problem that the location is in violation because it's
10 near Terrell Christian Academy, right?

11 A. That's what my letter says.

12 Q. Tell the jury and the judge at this time your
13 legal basis, either cases, stare decisis or other basis for
14 a position that a private non-federally-funded Christian
15 academy is a public school under the law.

16 A. I don't have any case law with me to hand you
17 today. I don't have any stare decisis. Mr. Wortham had
18 asked that I put into writing what was the reasoning as far
19 as the appearance of a violation of the city ordinance, and
20 my letter states what my position was, it was within 1000
21 feet of an educational institution, the Terrell Christian
22 Academy.

23 Q. And the reason that none of that exists is because
24 the reason is because none of that exists, does it?

25 A. Well, the ordinance states "or within a certain

1 distance requirement of other educational institution,"
2 which in my opinion was Terrell Christian Academy.

3 Q. And that very day, the same day that you sent that
4 letter under Exhibit 9 Mr. Wortham responded, didn't he?

5 A. He dated -- No. 9 is a letter from him dated
6 March 17th.

7 Q. That's the same very date, correct?

8 A. Correct.

9 Q. And he recapitulates your allegation of the
10 violation of 109.33 of the Texas Beverage Code and Ordinance
11 1939 of the City of Terrell, right? Because it's within
12 1000 feet of the Christian Academy, right?

13 MS. MORALES: Objection. Best evidence.

14 Q. (MR. NACOL) Look at the first paragraph.

15 A. He states, "Based on your letter," referring to my
16 letter, "it's the City's position that the sale of alcoholic
17 beverages from the above-stated location violates Section
18 109.33 of the Texas Alcoholic Beverage Code," which is not
19 referenced in my letter, "and Ordinance 1939 of the City of
20 Terrell."

21 Q. Did you have a phone call with him?

22 A. I don't recall.

23 Q. Is it possible that you could have referred to
24 that in a phone call?

25 A. I don't remember. Possible, but I don't remember.

1 Q. Okay. You do, in fact, rely on that statute,
2 though, don't you?

3 A. I don't specifically reference that statute.

4 Q. Okay. Does the city -- You're the city attorney --
5 does it or does it not rely on that statute in whole or in
6 part in the original denial of the license?

7 A. We rely upon the city ordinances.

8 Q. Okay. So with -- That's out of the case. You
9 never had any application to the Texas Alcoholic Code with
10 regard to this decision?

11 A. Well, I can't say we never referred to the Texas
12 Alcoholic Beverage Code, but as far as my letter of March
13 17th and his letter of March 17th, it appears that we were
14 discussing the educational institution, Terrell Christian
15 Academy. And in point of fact, in all candor, it would be
16 gross negligence to not look at the Texas Alcoholic Beverage
17 Code, would it not?

18 MS. MORALES: Objection, legal answer. You
19 can answer.

20 THE WITNESS: I don't know whether it would
21 be gross negligence, but I'm sure that it was discussed and
22 looked at.

23 Q. (MR. NACOL) Because the code specifically
24 precludes any city from a stronger restriction than the
25 code, doesn't it?

1 MS. MORALES: Same objection.

2 THE WITNESS: I believe that's correct.

3 Q. (MR. NACOL) So to either rely on a code that you
4 have express knowledge of as a lawyer is invalid would be
5 bad faith, wouldn't it?

6 MS. MORALES: Objection, argumentative and
7 states facts not in evidence.

8 THE WITNESS: I don't know that I would
9 characterize anything as bad faith, Mr. Nacol.

10 Q. (MR. NACOL) You wouldn't characterize anything as
11 bad faith?

12 A. No, sir, I wouldn't,

13 Q. So legally you don't think there is any bad faith
14 under current law with regard to treatment of an applicant
15 for a license by a city? There is no bad faith?

16 A. Bad faith on the part of whom?

17 Q. Those making decisions. You, ma'am.

18 A. No, sir. Absolutely not.

19 Q. Okay. Well, you know as a lawyer, a municipal
20 lawyer, that you cannot enact a code that supersedes federal
21 law or state law. You can't do that, can you?

22 A. No, sir.

23 Q. And the Alcoholic Beverage Code specifically will
24 not let you have a statute which exceeds its parameters. Is
25 that not correct?

1 MS. MORALES: Objection, legal conclusion.

2 THE WITNESS: I would agree with you that the
3 city ordinances follow state law.

4 Q. (MR. NACOL) Well, this city ordinance said any
5 church within 1000 -- I mean, any public school within 1000
6 feet, did it not? Does it not?

7 A. I'm sorry. Restate your question.

8 Q. The city ordinance that you're relying on states
9 that you can't have it within 1000 feet of a public school,
10 correct? Or educational institution, right?

11 A. Yes.

12 Q. There's nothing in there about having to get
13 consent from the school board, is there?

14 A. In the city ordinance?

15 Q. Yes.

16 A. No.

17 Q. That's a lot more restrictive than the state law,
18 isn't it?

19 MS. MORALES: Same objection.

20 THE WITNESS: Which is a lot more restrictive
21 than the state law?

22 Q. (MR. NACOL) To be able to exercise discretion and
23 deny a permit just because there's a school or any
24 educational facility within 1000 yards -- or within 1000
25 feet is a lot more restrictive than having it a public

1 school and having the requirement that the school itself
2 make a request that it not there be. That's more
3 restrictive, isn't it?

4 A. I don't understand your question. I'm sorry. I'm
5 not trying to be evasive, but I just don't understand what
6 you're asking.

7 Q. Okay. The statute that you relied upon said --

8 A. Which statute?

9 Q. The ordinance.

10 A. The city ordinance.

11 Q. The city ordinance says you can deny an
12 application, and, in fact, in your letter you refer to that
13 ordinance, that you cannot -- you may deny it if it's within
14 1000 feet of an educational institution, correct?

15 A. Let me refer to the ordinance. Ordinance 1939?

16 Q. Yes.

17 A. The ordinance states, "It shall be unlawful for
18 any person to sell or engage in the business of selling
19 alcoholic beverages within the City where the place of
20 business is within 300 feet of any church, public hospital,
21 or within 1000 feet of public schools or other educational
22 institutions."

23 Q. That's more restrictive, isn't it?

24 MS. MORALES: Same objection, legal
25 conclusion.

1 THE WITNESS: The ordinance says what it
2 says. I mean, as far as being more restrictive than the
3 Alcohol Beverage Code, I don't have the provision in front
4 of me.

5 Q. (MR. NACOL) Okay. Well, if you were going --
6 Well, I'm going to -- Well, look at Mr. Wortham's letter,
7 the exhibit I just gave you. The second page of his letter.

8 A. The second page of his letter states, Section
9 109.33 of the Texas Alcoholic Beverage Code itself states
10 that cities 'may enact regulations' and set out parameters
11 within which regulations may govern the sale of alcohol."

12 Q. And it also states, ordinance number 1939, "It
13 shall be unlawful," da-da, da-da, just as you indicated --

14 A. Correct.

15 Q. -- within 1000 feet from a public school or
16 educational institution.

17 A. Yes, sir.

18 Q. And then the next paragraph he specifically points
19 you to a city may not be more restrictive than the state,
20 and that any indication to you that this ordinance attempts
21 to prohibit the sale of alcoholic beverages by a dealer
22 whose place is within 1000 feet of a public school in all
23 circumstances. You don't have to call the board of
24 trustees. The trustees doesn't have to call, correct?
25 That's more restrictive, is it not? I mean --

1 MS. MORALES: Objection, asked and answered.

2 THE WITNESS: I don't know whether it would
3 be considered more restrictive.

4 Q. (MR. NACOL) Well, how about educational
5 institution? Is it your position that a vocational school
6 teaching you how to install mufflers on a Studebaker is --
7 would prohibit someone from selling alcohol?

8 MS. MORALES: I'm going to object as
9 argumentative and harassing. She's asked and answered your
10 question. I think it's apparent, sir, that she's not going
11 to answer the way you want her to. So I don't know how many
12 times you intend to ask the question.

13 MR. NACOL: I object to the lawyer couching --

14 MS. MORALES: I'm not couching --

15 MR. NACOL: -- coaching --

16 MS. MORALES: I'm making my objection to you.

17 MR. NACOL: -- in answering --

18 MS. MORALES: We're under the federal rules.

19 MR. NACOL: I know we are.

20 MS. MORALES: Okay. And they --

21 MR. NACOL: And under the federal rules there
22 are also --

23 MS. MORALES: I am not --

24 MR. NACOL: -- penalties for destroying --

25 MS. MORALES: I am --

1 MR. NACOL: -- depositions.

2 MS. MORALES: -- objecting.

3 MR. NACOL: Well, just state it. Just state
4 it and get it over with.

5 MS. MORALES: My objection is stated, but you
6 continue to harass the witness.

7 MR. NACOL: I'm not harassing this witness.
8 I'm questioning this witness. Her opinions are in issue.
9 Her decisions are in issue. Her discretion is in issue.
10 Her good faith is in issue, and those are all issues that I
11 can discuss.

12 MS. MORALES: And I don't dispute that. I
13 dispute you asking her 25 different times -- and I may have
14 misstated the 25 times, but at least five times the same
15 question.

16 MR. NACOL: Well, when she answers it
17 responsively, I'll quit.

18 MS. MORALES: The way you want? Is that what
19 you want her to do?

20 MR. NACOL: No, no. Okay. Just tell me when
21 you're done, and we'll go on.

22 MS. MORALES: I made my objections. If
23 you're going to ask 14 more times, I'll make the same
24 objection.

25 MR. NACOL: Okay. Are you done for now?

1 MS. MORALES: For now I am.

2 Q. (MR. NACOL) All right. Would you not agree with
3 me that there is no room for doubt among any lawyers that
4 educational institutions and public schools is a much
5 broader, inclusive concept than public -- than public
6 schools requiring a demand to the trustees themselves?

7 MS. MORALES: Objection, speculation.

8 THE WITNESS: I don't know, so I can't agree
9 or disagree.

10 Q. (MR. NACOL) Did y'all ever get a request from the
11 from any public school in Terrell for this application not
12 to be granted?

13 A. I don't know. I'm not aware of one.

14 Q. Did Rounsavall ever tell you there was one?

15 A. Not that I recall.

16 Q. Did any other person on this planet ever tell you,
17 communicate, e-mail, wire, call or any other form of
18 communication invoke the provision under the Texas Alcoholic
19 Beverage Code that they were requesting that this
20 application not be granted?

21 A. I don't know.

22 Q. Would you not have required that prior to denying
23 an application?

24 A. As I've stated before, all of that is handled in
25 the office -- through the office of the city secretary. So

1 I am not aware of it.

2 Q. But you have a duty to your client, don't you, the
3 city, do you not?

4 MS. MORALES: Objection, vague.

5 THE WITNESS: I have a duty to my client,
6 yes.

7 Q. (MR. NACOL) And the duty is to fulfill your duty
8 as an attorney and properly counsel that client, correct?

9 A. Correct.

10 Q. And in this case did you go to them? Did you go
11 to Rounsavall and indicate that this was required? There's
12 just no discretion here. You've got to have a request from
13 a school before we can ever deny this application.

14 A. I don't recall whether I did or not.

15 Q. Why didn't you do that?

16 A. I don't know.

17 Q. Did you ever call Mike Wortham after March the
18 17th and discuss the details of what he had discussed with
19 you in this letter?

20 A. Mr. Wortham and I talked on many occasions, and I
21 do not know the dates or times.

22 Q. Objection, nonresponsive. I didn't ask you the
23 general overture of that. I'm asking you a specific
24 question. Did you return the call on March the 18th, 19th
25 or 20th, within the next week, to discuss the legal

1 statements made on behalf of Mr. Beeler to you in this
2 letter, Exhibit No. 19?

3 A. Mr. Beeler did not make any representations to me
4 in that letter.

5 Q. No. 9, sorry. Go ahead.

6 A. I don't believe Mr. Beeler made any
7 representations to me.

8 Q. You don't feel like Mr. Beeler, through his
9 attorney, was representing to you that he was in compliance
10 for these reasons and that your analysis in the letter you
11 sent to him, Exhibit No.8, was erroneous? You can't glean
12 that from these correspondences?

13 A. No, sir, I can't glean that from the
14 correspondence. Any call that Mr. Wortham made to me I
15 returned, if that's your question.

16 Q. Is it your statement under oath here today that
17 you returned all the calls Mr. Wortham made to you?

18 A. If you could be specific as to the calls and the
19 dates and times, I'll be happy to go back into my records --
20 phone records and review them and see.

21 Q. Where are your --

22 A. I would presume --

23 Q. -- phone records?

24 A. -- I would.

25 Q. Where are your phone records? Where do you keep

1 them?

2 A. I don't have any specific phone records other than
3 the telephone slips where he called and anything that I
4 might -- any notes that I might have made from a telephone
5 call.

6 Q. Then what were you referring to when you said
7 you'd have to check your records?

8 A. I'd have to go back in my notes, in my file.

9 Q. What notes?

10 A. Any kind of notes I might have made of phone calls --

11 Q. Do you keep your --

12 A. -- from Mr. Wortham.

13 Q. Do you keep --

14 A. Sometimes I do and sometimes do.

15 Q. Is it long distance between here and Dallas?

16 A. No, sir, it's not.

17 Q. Do your phone records reflect phone calls?

18 A. No, sir.

19 Q. Then how would referring to them help you?

20 A. Well, I can't answer you specifically with regard
21 to the 17th, 18th, 19th or 20th, as you asked me, without
22 going back and seeing if I have any kind of note on any of
23 those dates. I presume -- It's my regular practice to
24 return all phone calls made to me, so I presume I did.

25 Q. Okay. Please look at Exhibit No. 10. Did you get

1 a copy of No. 10, Mr. Rounsavall's affidavit to the Texas
2 Alcoholic Beverage Commission?

3 A. Yes.

4 Q. Why didn't you send a copy of that to Mike
5 Wortham?

6 A. I don't know that we didn't -- it was not sent to
7 him.

8 Q. Okay. Do you think it would have been proper to
9 send that to him?

10 A. I think it would have been proper or not. I don't
11 know whether one was sent or whether one was not sent.

12 Q. Well, without question this would kill any
13 application with the Texas Liquor Control Board, wouldn't
14 it?

15 MS. MORALES: Objection, legal conclusion.

16 THE WITNESS: I don't know whether it would
17 or not.

18 Q. (MR. NACOL) What do you think the purpose was for
19 this?

20 A. I don't know that there was any -- I don't know
21 the purpose. You'd have to ask Mr. Rounsavall.

22 Q. He didn't discuss this with you before he sent it?

23 A. He discussed the contents, that he was not told of
24 the change of the physical location of the business when Mr.
25 Beeler came in, and it was approved in error. Just what the

1 affidavit states.

2 Q. And this is the 21st day of March of 2000, right?

3 A. Yes, sir.

4 Q. And did you provide Mr. Rounsavall with copies of
5 letters that Mike Wortham sent to you?

6 A. I don't know.

7 Q. And on March the 21st, Exhibit No. 11, the
8 information and supporting data was given to you from Mr.
9 Wortham reflecting the exemption under the state law that
10 you say that y'all accepted this information and finally
11 giving up the ghost and letting him have his license, right?

12 A. I don't know when this was received. The letter
13 is dated March 21st of 2000.

14 Q. Okay. Well --

15 A. And I presume it was received close to that time.

16 Q. Read to the jury what it says up in the right-hand
17 corner under March 21st, 2000.

18 A. "Via telefax."

19 Q. What does that mean?

20 A. I presume it means fax. It's just a long word for
21 fax.

22 Q. And wouldn't you kind of assume a little bit that
23 on March the 21st you got it --

24 A. I would assume --

25 Q. -- if it was faxed to you?

1 A. -- I did. I can't say that we didn't get it on
2 the 21st.

3 Q. All right. And what was the process that went
4 into your decision-making after you got this letter?

5 A. With regard to what?

6 Q. Whether Mr. Beeler should have a license to sell
7 alcohol at 305 Ninth Street.

8 A. It was one of the factors, I presume, that was
9 taken into consideration.

10 Q. I'm asking what you did, not what you presume.
11 What did you do?

12 A. I reviewed the letter, is all I can recall that I
13 did.

14 Q. And did you just put it on your desk and leave it
15 or --

16 A. No, if I had --

17 Q. -- did you call a meeting or --

18 A. If I had any question, I presume I called Michael
19 Wortham, the gentleman that sent it to me.

20 Q. Did you provide this letter to Mr. Rounsavall?

21 A. I'm sure that I did at some point. I can't
22 remember -- I don't know the exact date.

23 Q. Well, you said earlier that you may not have sent
24 other letters from Mike Wortham. What makes you know this
25 one

1 A. Well, your question was did I send this one or any
2 other. I don't have any independent recollection of when I
3 sent them or what date I sent them.

4 Q. Okay. So you may not -- You don't have knowledge
5 or recollection of even sending this to Mr. Rounsavall, do
6 you?

7 A. I furnish my clients -- generally furnish my
8 clients with copies of everything that I get.

9 Q. Okay. So then you would have sent him all the
10 letters, would you not?

11 A. I presume. I don't know for sure.

12 Q. You can't tell the jury and the judge whether you
13 did or didn't. You think you did, because you usually do,
14 but you don't know?

15 A. Not unless I have a copy of a cover letter or
16 memorandum that shows it would be the exact -- would be the
17 only thing I could give you any specific dates.

18 Q. How did you communicate with your client with
19 regard to the propriety of the license without giving him
20 this data to look at?

21 MS. MORALES: Objection, mischaracterizes the
22 witness's testimony.

23 THE WITNESS: I don't understand your
24 question.

25 Q. (MR. NACOL) What did you say to Mr. Rounsavall?

1 I mean, what did y'all discuss?

2 A. This was a -- Mr. Nacol, this was an ongoing
3 situation. There was new information being furnished daily,
4 weekly with regard to this situation. Mr. Beeler would come
5 in. Mr. Wortham would call. And it was -- Any information --
6 We were trying to review the ordinances and trying to do
7 everything we could to make the proper decision in this
8 case.

9 Q. All right. Did you or did you not after you
10 received Exhibit 11 make the legal decision in your mind
11 that the license should be granted?

12 A. Did I make the legal decision yes or no based on
13 this letter?

14 Q. Yes.

15 A. I don't know if this letter was the turning point
16 or not.

17 Q. Tell the jury when you made the decision.

18 A. I believe we were -- I believe we were represented
19 at that point. I believe that your client had filed suit at
20 some point, and at that point we had to take everything up
21 at the courthouse. There was a state litigation that your
22 client filed against the city.

23 Q. I understand, ma'am, but I don't think it was
24 filed yet. It's not filed yet.

25 MS. MORALES: You've already answered.

1 Q. (MR. NACOL) Can you tell the jury on March the
2 21st of 2000 or within a week afterwards you did or did not
3 make a decision based on the March 21st, 2000 letter that a
4 license should be granted?

5 MS. MORALES: Objection, asked and answered.

6 THE WITNESS: I don't recall.

7 Q. (MR. NACOL) Can you look at the letter today,
8 read it and tell me any conceivable reason that you were
9 discussing with Mr. Beeler through Mr. Wortham at that time
10 to deny the application after reading the letter?

11 A. I don't recall at what point we were at that time
12 on March 21st. I don't recall if the litigation had been
13 filed. I don't recall at what point we were in this
14 situation.

15 Q. Forgetting about litigation, ma'am -- I'm not
16 asking about litigation. I'm asking you on the 21st, after
17 you read and looked at this data and saw it, as a lawyer
18 what legal basis could possibly exist at that time for not
19 granting the license?

20 A. The city ordinances.

21 Q. Okay. Which ordinances does this not cure?

22 A. Ordinance 1939.

23 Q. What part of 1939?

24 A. The distance requirements, which --

25 Q. If --

1 A. -- upon proper -- upon this data being submitted,
2 then that's when the discussions were had about whether or
3 not it would take it out of the requirements of 1939.

4 Q. Okay. What discussions? When, where and who?
5 Tell me about them.

6 MS. MORALES: I'm going to object to the
7 extent that it calls for privileged information, any
8 discussions you had with counsel, and I instruct you not to
9 answer, but you can answer otherwise.

10 THE WITNESS: I don't recall specific
11 discussions and with whom we had them.

12 Q. (MR. NACOL) Okay.

13 A. I don't know if we were represented by outside
14 counsel --

15 Q. Well, what is --

16 A. -- at that point.

17 Q. So the issue at this time was you're too close to
18 a school, right? And this was trying to exempt you from
19 that issue, exempt -- This was given to you to try to
20 exempt Mr. Beeler from that issue?

21 A. I don't remember what Mr. Beeler's attorney's
22 position was at that time.

23 Q. Well, we've just gone -- Do you want me to go
24 through all these letters again? I mean, they're so
25 specific. Every one of them tracks what we discussed. Go

1 through them there. I mean, if there was any other issue
2 before you, I'd like to know what it is. Look at the
3 statutes. We've discussed them. We have disagreements
4 about what they mean, but I think --

5 A. I don't see anything at that -- At the point that
6 this information was submitted in March, I don't see
7 anything from any of the attorneys representing Mr. Beeler
8 with regard to anything about income from sale of alcoholic
9 beverages.

10 Q. Okay. Objection, nonresponsive. My question to
11 you is this. After you received this -- You received it
12 now. You've seen it -- what other evidence did you need to
13 make a decision on whether it was exempted or not?

14 A. I don't recall.

15 Q. There was none, was there?

16 A. I don't recall.

17 Q. Look at the evidence now. Do you see any basis
18 for doubt based on this that he was exempted, assuming that
19 a private school that's not funded, there's no -- Assuming
20 all that, that you fell within the statute -- If I accept
21 your premise, how does leave any doubt -- any reasonable
22 legal doubt that he was exempted?

23 A. I'm sorry. I don't understand what you're asking
24 me.

25 Q. Well, 50 percent, he shows \$800,000 in income, and

1 he shows \$100,000 in total purchases. How could there be
2 any doubt in your mind at point that he's exempted?

3 A. I don't recall. I don't recall what the
4 discussions were at that point.

5 Q. Well, look at it today. What doubt do you have
6 today?

7 A. If this is the latest information that was
8 furnished, I don't know whether there was any supplemental
9 information given to our counsel -- I don't know.

10 Q. That's not my question. Look at that right there
11 and tell me any doubt you have of any kind where any legal
12 mind could differ.

13 MS. MORALES: Object, legal conclusion.

14 THE WITNESS: Well, based upon the letter --
15 I mean, the letter speaks for itself.

16 Q. (MR. NACOL) Right.

17 A. As far as any verification of any of these numbers
18 or any -- I don't remember what our discussions were back
19 in March of 2000.

20 Q. You never verified anything, did you?

21 A. Yes, sir, we did.

22 Q. All right. Tell the jury --

23 A. It's my understanding --

24 Q. -- what your verification --

25 A. -- we asked for additional information.

1 Q. What did you ask for?

2 A. I don't recall.

3 Q. Show the jury the letter requesting it.

4 A. I don't recall the letter, and I don't remember --

5 Q. There is not a letter --

6 A. -- if it was --

7 Q. -- is there?

8 A. -- letters or if it was in telephone
9 conversations.

10 Q. In point of fact, y'all didn't want this man to
11 have this license, did you?

12 A. Mr. Nacol, we had no reason at all to treat Mr.
13 Beeler any differently from anyone else as you're
14 insinuating.

15 Q. Well, you changed your position multiply, didn't
16 you, legally, time after time again?

17 A. No, sir, we did not.

18 Q. Well, look at Exhibit No. -- Where are my
19 exhibits now? Are they all mixed up? Okay. Look at
20 Exhibit No. 12. Do you recall receiving that letter from
21 Mr. Wortham?

22 A. I don't have an independent recollection, but I
23 presume I did.

24 Q. Do you deny that you received this letter and read
25 it?

1 A. No, sir.

2 Q. Okay.

3 A. I presume if it was addressed to me, I got it.

4 Q. And it was sent by via telefax too, wasn't it?

5 A. Yes,

6 Q. So five days later -- Did you have a conversation
7 with Mr. Wortham between the 17th and the 23rd?

8 A. I don't know if I did or not.

9 Q. He commences his salutation, "Dear Mary Gayle,"
10 and then he says, "Thanks for sending me the latest
11 ordinance the city is relying on in its protest of the
12 application." Now -- Can you tell the jury how suddenly
13 Section 2(D) of Chapter 5, Sale in Residential Area, is
14 prohibitive, became the new basis for denial?

15 A. I don't know that it states --

16 Q. How did this state --

17 A. Excuse me?

18 Q. How did y'all come to that conclusion?

19 MS. MORALES: What were you -- Did you not
20 finish your answer?

21 THE WITNESS: I don't understand what you're
22 asking.

23 Q. (MR. NACOL) Okay. You had never in any previous
24 correspondence, telephone call or discussion or filing with
25 any agency ever stated that Section 2(D) of Chapter 5 was

1 the basis for prohibition, had you?

2 A. I don't recall if I did or not.

3 Q. Okay. Show the jury where you did.

4 A. I don't know that I did or didn't, but this --

5 Q. You have no evidence that you did, do you?

6 A. No, and I have no evidence that I didn't.

7 Q. But you have no letter to Mr. Wortham that you
8 did, do you?

9 A. No, sir.

10 Q. And you have no oral evidence of any conversations
11 where you did, do you?

12 A. I have no -- Excuse me?

13 Q. You have no oral evidence. You can't tell the
14 jury about any conversation where you ever discussed
15 residence with Mr. Wortham prior to this, can you?

16 A. I'm sorry. I don't understand your question.

17 Q. Tell the jury every conversation you had with Mike
18 Wortham prior to March the 23rd, 2000, with regard to the
19 Section 2(D), Chapter 5.

20 MS. MORALES: Objection, asked and answered.

21 THE WITNESS: I don't recall any conversation
22 with regard to 2(D).

23 Q. (MR. NACOL) So you have no written evidence and no
24 recollection of any conversation, correct?

25 A. Correct.

1 Q. So is it your position -- Why do you think Mike
2 suddenly brought all this up?

3 A. I don't know.

4 Q. Was it the city's position yes or no that the
5 application on March the 23rd should be denied because 305
6 Ninth is a residence rather than a retail area?

7 MS. MORALES: Objection, speculation.

8 THE WITNESS: I'm sorry. Ask the question
9 again.

10 Q. (MR. NACOL) Did you -- did the City of Terrell
11 through you -- Strike that. Did the City of Terrell take
12 the position, and you as its attorney, take the position
13 that Mr. Beeler's wine and beer retailer's off-premise
14 permit for 305 Ninth Street should be denied because that
15 was a residential area?

16 A. I don't think so. I don't know.

17 Q. You never took that position. All right.

18 (Recess from 1:47 to 2:50)

19 Back on the record. Okay. Were you aware of Exhibit
20 No. 18, the withdrawal by the City of Terrell letter of
21 protest signed by Mr. Rounsavall? Did he discuss this with
22 you?

23 A. No, sir.

24 Q. Had you ever seen this before?

25 A. I may have gotten a copy of it. At that point the

1 city was represented by Mr. Marshall, and I notice Mr.
2 Marshall received a letter as shown on the letter.

3 Q. Right, I mean, the city is getting sued now and
4 you, as an employee of the city or agent or whatever, have
5 an interest in seeing that things are done right, don't you?

6 A. No, sir.

7 Q. "The applicant has provided information to the
8 Attorney representing the City of Terrell in this case to
9 certify that while the information provided by the" --
10 "information provided by the Applicant, less than 50 percent
11 of gross sales, excluding gasoline sales, will be from beer
12 and wine, making the city's 1000 foot distance requirement
13 inapplicable. Thus, there are no ordinances or Charter
14 provisions that would prevent Applicant from selling beer
15 and wine at the premises," right?

16 A. Yes. You skipped one line, but, yes, that's
17 essentially --

18 Q. Okay.

19 A. -- accurate.

20 Q. And July the 27th is the date of this, right?

21 A. Correct.

22 Q. Tell the jury what happened between the date that
23 you had your -- you received the data that we've been over
24 laboriously that set out the 50 percent issue and this
25 letter -- Why did it take 119 days to make that decision?

1 MS. MORALES: I'm going to object to the
2 extent that it calls for attorney-client privilege and --

3 MR. NACOL: Don't tell me anything --

4 MS. MORALES: -- I'm going to instruct you
5 not to answer with regard to --

6 Q. (MR. NACOL) I don't want to know the privileges.

7 A. With regard to any delays, as you stated, it would
8 be during that period of time. I don't remember what
9 specifically we went through, but I remember that there was
10 a lawsuit filed and the city retained counsel in that
11 lawsuit. But anything specific, I don't recall.

12 Q. Okay. So can you tell the jury everything that
13 you did -- Did you have any conferences with Mr. Rounsavall
14 during that period?

15 A. I'm sure I did, but I don't remember any
16 specifically.

17 Q. So Mr. Rounsavall made the final decision on the
18 application?

19 A. Not necessarily.

20 Q. Who did?

21 A. The final decision with regard to what?

22 Q. To grant it.

23 A. Be more specific.

24 Q. To grant it, the permit.

25 A. In July 27th --

1 Q. Yeah.

2 A. -- of 2000?

3 Q. Yeah.

4 A. I don't know who made that decision. I assume it
5 was on advice of counsel.

6 Q. Okay.

7 A. Which would be -- at that point I assume was Mr.
8 Marshall.

9 Q. Well, Mr. Marshall was the litigation counsel,
10 right?

11 A. Correct.

12 Q. But you're still the city counsel, right?

13 A. Correct.

14 Q. You still give information and have a duty to your
15 client to make the right decisions with regard to whatever
16 they do?

17 A. Correct.

18 Q. And you had nothing to do with that application of
19 Ly Muy Rodriguez d/b/a 747 Water Mart Location 307 Ninth
20 Street, Terrell, Kaufman County, Texas?

21 MS. MORALES: Objection, ambiguous.

22 THE WITNESS: Had nothing to do with it in
23 what respect?

24 Q. (MR. NACOL) Researching issues, seeing if it was
25 too close to a church, seeing if it was by an athletic

1 field, seeing if it was in residence versus retail, seeing
2 if it was by an educational institution, seeing if it was
3 within 1000 foot of an educational institution or a church.
4 You had nothing to do with that, did you?

5 A. With regard to whether or not it complied with
6 ordinances or whether --

7 Q. Yeah.

8 A. -- it was grandfathered or whether -- the whole
9 situation, yes, I would look at all that.

10 Q. Did you look at all that?

11 A. But I didn't have anything to do with the
12 approving or disapproving of the Rodriguez application. I
13 believe that's their name.

14 Q. Did you look at those things?

15 A. With regard to this ordinance?

16 Q. Yeah.

17 A. That was handled in the office of the city
18 secretary.

19 Q. Did you perform the same services with regard to
20 the Ly, L-y, M-u-y Rodriguez, d/b/a 747 Water Mart, 307
21 Ninth Street application that you did with Mr. Beeler's
22 application?

23 MS. MORALES: Objection, ambiguous.

24 THE WITNESS: The situation -- the Rodriguez
25 case never went to court, so, no, I didn't perform all the

1 same functions and all the same duties and all the same --
2 it was two different situations.

3 Q. (MR. NACOL) Yeah, you just granted that one,
4 didn't you?

5 A. Two different -- No. Two different locations.

6 Q. It was granted in 60 days, wasn't it?

7 A. I don't know.

8 Q. Well, did you have correspondence with his lawyers
9 and review statutes and correspond and do all the legal work
10 that you did on that case the same way you did the Beeler
11 case?

12 A. I don't know that Mr. Rodriguez had -- or Mrs.
13 Rodriguez had a lawyer.

14 Q. Objection, nonresponsive. Move that it be
15 stricken. Did you, in the application for a retailer's
16 permit or license of Ly Mui Rodriguez, d/b/a 757 Water Mart,
17 perform the same legal work, review the same statutes and
18 have the same discussions with either Ly Mui Rodriguez or
19 their attorneys, if any, as you did with Mr. Beeler?

20 A. No.

21 Q. Why?

22 A. I was not asked to.

23 Q. Okay. That was just granted, wasn't it?

24 A. I don't know.

25 MS. MORALES: Objection, asked and answered.

1 THE WITNESS: I don't know. That case was
2 not referred to me.

3 Q. (MR. NACOL) In this memorandum, ma'am -- I don't
4 have another copy of it because this is what y'all produced
5 today. This is from John Rounsavall to you, correct?

6 A. Yes, sir.

7 Q. And it's -- the subject is alcoholic beverage
8 permit Handy Mart No. 1, right?

9 A. Yes, sir.

10 Q. February 23rd of 2000. It starts off, "This came
11 through as an address change only" -- and we've been through
12 that ad nauseam, and we've respectfully agreed to disagree
13 on that issue. The problem is the person is moving into a
14 location the city has previously denied because of its
15 proximity to school property and day care. Is that where --
16 Does that refresh your recollection of the original
17 complaint -- original denial of the application?

18 A. No, sir.

19 Q. Okay. This original location was next door and
20 selling liquor prior to this applicant who bought the store.
21 What does that mean?

22 A. I don't know. That is a memorandum from Mr.
23 Rounsavall.

24 Q. To you, right?

25 A. Correct.

1 Q. And did you respond to this memorandum?

2 A. Not in writing.

3 Q. Well, orally?

4 A. I presume orally.

5 Q. How did you respond?

6 A. John and I discussed -- Mr. John Rounsavall and I
7 discussed that when this application was presented he
8 approved it, because the way that the application was
9 presented, he presumed it was the same location.

10 Q. Well, he says the old store want to continue to
11 sell liquor and this location cannot. Where did he get that

12 A. It's my --

13 MS. MORALES: Objection, speculation. You
14 can answer.

15 THE WITNESS: It's my understanding that --
16 and I don't have any specifics with regard to this -- that
17 the location at 305 -- or 307, the location of Mr. Beeler,
18 the one he was purchasing from Mr. Calvert, had been denied
19 in years past. But I don't have anything to substantiate
20 that, and I presume that's what John's referring to.

21 Q. (MR. NACOL) Do you know who was denied or why or
22 the reason around it?

23 A. I do not. And it's also my understanding that Mr.
24 Beeler discussed that with Tim Malone from TABC and he
25 advised him that that location had been denied.

1 Q. Did you tell him that any previous denial on the
2 basis of a day care had no basis in law?

3 A. I don't recall I told him. I don't recall he
4 asked me.

5 Q. That would have been proper counsel, wouldn't it?

6 A. I don't recall what I told him.

7 Q. Wouldn't that have been proper counsel?

8 A. If that was the case, but that's just speculation.

9 Q. Wouldn't it have been proper under any scenario to
10 rather than submit a city to a lawsuit to say, "Look,
11 there's nothing in the statute that says day care. It's not
12 in the statute. We can't deny on that basis"? Wouldn't
13 that be the proper thing to do?

14 MS. MORALES: Objection, legal conclusion.

15 THE WITNESS: If that's what the law states,
16 yes.

17 Q. (MR. NACOL) And that is what it states, right?

18 A. I presume, yes.

19 Q. I'm jumping around fast here, but it's not my
20 fault. Now, Exhibit No. 23 is a letter you received from
21 David Mallard, attorney for Grady and Myrna Lawson?

22 A. Yes, sir.

23 Q. And he -- delay or refusal by the city is
24 jeopardizing the lease/sale of the clients' premises, which
25 will obviously damage them. You knew he'd be damaged, too,

1 didn't you?

2 A. According to Mr. Mallard --

3 Q. Just like --

4 A. -- according to his letter.

5 Q. Right. Just like Mike Wortham told you in that
6 first letter, right? With regard to Beeler.

7 A. That's what the letter says.

8 Q. And you don't know how quickly this one was
9 granted, do you?

10 A. No, sir, I don't. I don't know the time frame.

11 Q. Now, the affidavit that Mr. Rounsavall sent, did
12 he run that affidavit by you before he sent it to the TABC?

13 A. I don't recall if he did or not.

14 Q. Did he discuss it with you?

15 MS. MORALES: Objection, asked and answered.

16 THE WITNESS: I don't remember. I don't
17 remember if he did or not.

18 Q. (MR. NACOL) And that was in Chapter 5 Section
19 2(D) of code -- ordinances of the City of Terrell?

20 A. If I could look at that.

21 Q. We discussed that earlier.

22 A. I don't remember.

23 Q. Just as we sit here today, you are aware, are you
24 not, that the property is zoned retail, Mr. Beeler's
25 property?

1 A. I'm not aware of whether it is or not. I would
2 presume it is.

3 Q. And that is easily determined just by going down a
4 map and platting it, isn't it?

5 A. Correct.

6 Q. That's not a problem at all. I mean, with the
7 smallest amount of due diligence that can be discovered,
8 can't it?

9 MS. MORALES: Objection, legal conclusion.

10 THE WITNESS: As to whether -- how it's
11 zoned?

12 Q. (MR. NACOL) Yeah.

13 A. Yes, you could be -- you can find that out at the
14 city.

15 Q. Right. Can you tell me how then in good faith any
16 city could take the position that his property was a
17 residence?

18 MS. MORALES: Objection, legal conclusion.

19 THE WITNESS: Mr. Nacol, the letter that you
20 refer to is a letter from Mr. Wortham to me, stating that he
21 assumes that's my position or he is informing me that's my
22 position. The letter that I sent to Mr. Wortham doesn't
23 reflect that.

24 Q. (MR. NACOL) No, no. He's taking the position
25 it's the city's position, because they state it in an

1 affidavit. He's talking about the city, not necessarily
2 you.

3 MS. MORALES: I object to the extent it's
4 calling for speculation.

5 Q. (MR. NACOL) Can you think of any good faith basis
6 of denying the application of Mr. Beeler based on the fact
7 that his building is in a residential as opposed to a retail
8 zoning location?

9 A. I don't know that I can answer that without --
10 without looking into -- back to Mr. Rounsavall's affidavit
11 and -- to be clear on what you're talking about.

12 Q. If it is your position that -- If it is the --
13 Not you. Forget that. Strike all that. If it the city's
14 position -- just assume it's the city's position that the
15 application should not be granted because 305 is a
16 residential area, there is no good faith basis for making
17 that conclusion, is there?

18 MS. MORALES: Objection, legal conclusion.

19 THE WITNESS: I can't say whether there's a
20 good faith basis or not.

21 Q. (MR. NACOL) Well, didn't you say that anybody can
22 go down and map and plat it in 10 minutes and find out if
23 it's retail or residential?

24 A. I said you could go to the city. I didn't say
25 anything about map or plat.

1 Q. Well, to go to the city, it takes 10 minutes,
2 doesn't it?

3 A. I don't know, but you can find out -- .

4 Q. Quickly.

5 A. -- at the city.

6 Q. All right. So it's not a complicated, erudite
7 legal question requiring multiple briefs or anything. I
8 mean --

9 A. No, sir.

10 Q. -- you can just go look it up. And you know it as
11 soon as you see it, don't you, that it's retail or
12 residential?

13 A. It's very easily discoverable how it's zoned
14 through the city.

15 Q. Okay. After going through the exhibits, you will
16 agree with me that in March or late February of 2000 the
17 city took the position that the selling of alcohol was
18 unlawful because it was within 1000 feet of an athletic
19 field or a day care facility? You will agree with that,
20 won't you?

21 MS. MORALES: Objection, asked and answered.

22 THE WITNESS: No, sir.

23 Q. (MR. NACOL) Didn't I show that to you, the very
24 letter that stated that?

25 A. The letter that I am looking at is dated March

1 17th of 2000. And it says it appears to be in violation of
2 the city ordinances and that it's within 1000 foot of an
3 educational institution, namely Terrell Christian Academy.

4 Q. Well, I'm not talking about that one. I'm talking
5 about the first one.

6 A. Which one? The letter from -- Another letter
7 from me?

8 Q. Okay. You're just going to say no to that. You
9 don't think there's a letter about that, right?

10 A. I don't recall a letter.

11 Q. And March 17th of 2000 you did take the position
12 it was located within 1000 feet of Terrell Academy, right?

13 A. Yes, sir.

14 Q. And then you were informed of the position of Mr.
15 Beeler, that was completely untenable for reasons we've
16 discussed, correct? And then did you not have a telephone
17 conversation with Mike Wortham on March the 23rd of 2000
18 wherein you stated that Section 2(D), the one we've
19 discussed, sale in a residential area is prohibited,
20 precluded granting of a license. Did you or did you not
21 have that discussion?

22 A. On what date?

23 Q. March 23rd of 2000.

24 A. I don't recall. I have a letter from Mr. Wortham
25 that said he started representing Mr. Beeler May the 2nd of

1 2000.

2 Q. Did you have a conversation -- Strike that as
3 being nonresponsive and argumentative. Did you or did you
4 not on March the 23rd of 2000 -- Strike that -- on March
5 the 23rd of 2000 have a telephone conversation with Mike
6 Wortham indicating that the sale was prohibited because it
7 was in a residential area?

8 A. I don't recall a conversation.

9 Q. Is that a yes or no or I don't recall either way?

10 A. I don't recall.

11 Q. Did you ever tell Mike Wortham that the city was
12 protesting the permit because the location had never been
13 allowed to sell beer?

14 A. Not that I recall.

15 Q. That wouldn't be at odds, though, with the rest of
16 what we've discussed today, would it? You did point out to
17 me where the previous owners had been denied licenses.

18 A. They didn't say that was the reason for denial of
19 Mr. Beeler's permit.

20 Q. Okay. That was Mr. Rounsavall's concern, though,
21 in his memo, wasn't it?

22 A. I don't know what Mr. Rounsavall's determination
23 was.

24 Q. That was on the face of it in writing, wasn't it?
25 Of the memo?

1 MS. MORALES: Objection, ambiguous.

2 THE WITNESS: No, sir.

3 Q. (MR. NACOL) Okay. Let's find it.

4 A. It's in here. A one-pager.

5 MS. MORALES: There it is.

6 THE WITNESS: That one.

7 Q. (MR. NACOL) Exhibit No. 22, this application --
8 The problem is the person is moving into a location that had
9 been previously denied because of its proximity to school
10 property and day care. So it was his concern, wasn't it?

11 MS. MORALES: Objection --

12 MR. NACOL: His previous --

13 MS. MORALES: -- speculation.

14 MR. NACOL: -- denials.

15 THE WITNESS: I don't know. Evidently.

16 Q. (MR. NACOL) What else do you think it meant by
17 that?

18 A. Informational purposes. I don't know.

19 Q. It says, "What's next?" He's not asking you to
20 analyze that point?

21 MS. MORALES: Objection, speculation.

22 Q. (MR. NACOL) And in Mr. Rounsavall's March 21st,
23 2000 affidavit to the TABC, would you agree with me that he
24 indicated it did not comply with the ordinance of the city
25 regarding the sale of alcoholic beverages in residential

1 areas?

2 MS. MORALES: Objection, best evidence.

3 THE WITNESS: If that's what it says.

4 Q. (MR. NACOL) We've already discussed the logistics
5 of that argument, haven't we? Well, I want to stop a few
6 minutes early because I want to get us a date right now
7 before we leave.

8 MS. MORALES: Okay. Fine.

9 MR. NACOL: I don't want to get back and --

10 THE REPORTER: Do you want to go off the
11 record here?

12 MR. NACOL: Yeah. I want to put the date on
13 the record, but I want to go off the record.

14 (Recess from 3:37 to 3:28).

15 The parties have stipulated as follows: Due to
16 the needs of the deponent to pick up her child at EDS in
17 Dallas -- ESD in Dallas we have agreed to continue her
18 deposition to the offices of Nacol, Wortham & Associates,
19 990 South Sherman, Richardson, Texas, commencing at 9:30
20 p.m. Central Standard Time on October the 2nd, and we have
21 rescheduled, by agreement, the deposition of John Rounsavall
22 for Monday, October the 1st, commencing at 10:00 o'clock
23 until completion at this Terrell location.

24 MS. MORALES: The only thing I would add, you
25 said "9:30 p.m." And I'm sure you meant 9:30 a.m.

1 MR. NACOL: That's what I meant, 9:00 a.m.
2 Yeah. Good addition.

3 (Deposition adjourned at 3:29 p.m.)
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25

CHANGES AND SIGNATURE

PAGE LINE CHANGE

REASON

39 3 Colquitt misspelled

40 20 were misstatement

41 7 I don't know that I - repeated

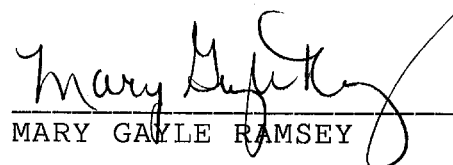
43 13 except exempt

46 22 had/heard misspelled

75 15 this was a question to me

99 6 yes sir misstated

I, MARY GAYLE RAMSEY, have read the foregoing deposition and hereby affix my signature that same is true and correct, except as noted above.


 MARY GAYLE RAMSEY

1 THE STATE OF TEXAS)

2 Before me Jennifer Gowin, on this day personally
3 appeared MARY GAYLE RAMSEY, known to me (or proved to me on
4 the oath of Mary Gayle Ramsey or through _____
5 (description of identity card or other document) to be the
6 person whose name is subscribed to the foregoing instrument
7 and acknowledged to me that he executed the same for the
8 purposes and consideration therein expressed.

9 Given under my hand and seal of office this 2nd
10 day of November, A.D., 2001.

11
12 Jennifer Gowin
13 Notary Public in and for the State of Texas



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

1	JON BEELER,) (
2) (
3	Plaintiff,) (
4	VS.) (CIVIL ACTION
5) (NO. 3:00CV2441-M
6	JOHN ROUNSAVALL, ET AL) (
7) (
8	Defendants.) (

DEPOSITION OFFICER'S CERTIFICATE
PURSUANT TO RULE 30(f), FRCP

I, SUSAN M. OWEN, a Certified Shorthand Reporter in and for the State of Texas, do hereby certify that there came before me on the 12th day of September, A.D. 2001, at 12:31 p.m., at the offices of the City of Terrell, 201 East Nash Street, Terrell, Texas, following named person, to-wit: MARY GAYLE RAMSEY, who was by me duly sworn to testify to the truth and nothing but the truth of her knowledge touching and concerning the matters in controversy in this cause; that she was thereupon carefully examined upon her oath and her examination reduced to typewriting with the aid of Computer-Assisted Transcription; and that the deposition is a true record of the testimony given by the witness; that it was requested that the witness review the transcript; and that the transcript was submitted on Sept 24, 2001, to the attorney for the witness for his review, and changes, if any, in form or substance made

1 by the deponent during the 30-day period allowed are
2 appended hereto.

3 I further certify that I am neither attorney nor counsel
4 for, nor related to or employed by any of the parties to the
5 action in which this deposition is taken, and further that I
6 am not a relative or employee of any attorney or counsel
7 employed by the parties hereto or financially interested in
8 the action.

9 IN WITNESS WHEREOF I have hereunto set my hand on this
10 the 24th day of Sept., A.D. 2001.

11
12
13 Susan M. Owen
14 SUSAN M. OWEN, Certified Short-
15 hand Reporter in and for the
16 State of Texas.
17 Certificate No. 2013
18 Certificate expires 12/31/02
19 3767 Forest Lane
20 Suite 124, #1110
21 Dallas, Texas 75244-7100
22 972/317-9911
23
24
25

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