

1 THE COURT: Please be seated. I'm assuming, as a
2 practical matter, that Mr. Gates will probably have to stay
3 until tomorrow. Is that --

4 MR. HOLLEY: Yes, Your Honor.

5 THE COURT: I didn't want to have to ask the jury to
6 stay later. If the expectation is he will probably have to
7 stay until tomorrow, that's fine.

8 MR. HOLLEY: Yeah. He really -- he does need to be
9 out of here tomorrow, Your Honor, but, yes, he's anticipating
10 staying until tomorrow morning.

11 THE COURT: Okay. Good. Thank you.

12 THE CLERK: Are we ready, Judge?

13 THE COURT: Yes.

14 (Jury brought into the courtroom.)

15 THE CLERK: Court will resume session. Please be
16 seated.

17 THE COURT: Mr. Holley.

18 MR. HOLLEY: Thank you, Your Honor.

19 Q. BY MR. HOLLEY: Mr. Gates, I'd like you to take a look,
20 if you would, at what's been marked as Plaintiff's Exhibit
21 220. And I'd like to focus on the email at the top of the
22 first page of this document. Can you tell us what that is,
23 please?

24 A. It's an email from Brad Silverberg to Russ Siegelman,
25 who worked on Marvell, and it's copied to myself, Bill G,

1 there, and Paul Maritz.

2 Q. In the first paragraph Mr. Silverberg, writes to
3 Mr. Siegelman, to you and Mr. Maritz, "I think we should do
4 number 1, make the extensions public." And then he goes on
5 to say, "I am afraid that when we tell ISV's, there will be a
6 firestorm of protest."

7 Was there such a firestorm of protest about your
8 decision to withdraw support for the NameSpace extension
9 API's?

10 A. No. I don't remember hearing from anybody, seeing any
11 article. It was not something that -- that created anything
12 even close to a firestorm that -- that I was aware of.

13 Q. Mr. Silverberg goes on to note, lower in, he says, "In
14 addition, we know that Stac is doing the same," and I guess
15 by reference there he's saying there -- well, maybe we should
16 just look at this in order rather than trying to skip that.
17 The second sentence says, "I heard today that the Outside-in
18 people, SCC, from whom we've licensed our viewers, are --
19 building their business based on shell extensions. In
20 addition, we know that Stac is doing the same. Oh, great.
21 Another war with Stac."

22 Was there another war with Stac about your decision
23 to withdraw support for the NameSpace extension API's?

24 A. No.

25 Q. And what is the reference there, sir, to another war

1 with Stac?

2 A. There had been a patent that Stac wanted us to license,
3 and there had been a lawsuit around that.

4 Q. And then Mr. Silverberg writes, "Other ISV's using the
5 extensions are WordPerfect, Lotus, Semantic and Oracle.
6 These companies will not be bashful about expressing their
7 displeasure." And then he predicts that this will all play
8 out on page 1 of the weeklies.

9 Was there any press account involving your decision
10 to withdraw support for the NameSpace extension API's?

11 A. No. I don't remember any press of any kind about
12 this.

13 Q. Did anyone from Oracle, Semantic, Lotus or WordPerfect
14 ever contact you about your decision to withdraw support
15 for the NameSpace extension API's?

16 A. No. I had that email from Paul that we looked at that
17 said Semantic had been using them, but, otherwise, no.

18 Q. Now, Mr. Gates, I -- you mentioned earlier that you
19 attended industry events at which various ISV's were in
20 attendance. I'd like to show you what's been marked as
21 Defendant's Exhibit 84. Mr. Gates, this appears to be an
22 email from someone named Brad S-t-r. As you can see below,
23 it's from Brad Struss at Microsoft.com to Bill G, entitled
24 CEO Dinner Talking Points.

25 Is this a document that you recall seeing

1 previously, sir?

2 A. I saw it in my deposition, and it appears to be an
3 email that Brad Struss, as part of that developer's relations
4 group, sent me before a meeting with software and hardware
5 CEO's.

6 Q. And in the second paragraph, Mr. Struss writes,
7 "Confirmed attendees are at very bottom of this email." And
8 directing your attention to the last page of this Defendant's
9 Exhibit 84, do you see any attendees from WordPerfect
10 Corporation?

11 A. Yeah. Adrian Rietveld and Dave Moon.

12 Q. Now, among the topics that Mr. Struss writes to you
13 about under number 6 on the second page, entitled Q and A, is
14 the NameSpace extensions, correct?

15 A. That's right.

16 Q. And Mr. Struss writes, "The NameSpace extensions were
17 initially pulled from Win 95" -- and that's just a short form
18 for Windows 95, right, Mr. Gates?

19 A. Yeah. Same as Chicago, exactly.

20 Q. "And ISV's were informed of this change. In general,
21 they have been okay with this."

22 Now, is this statement inconsistent with any
23 knowledge that you had at the time about the attitude of
24 ISV's about the withdrawal of support for the NameSpace
25 extension API's?

1 A. It's consistent with the fact that I don't remember any
2 concern being expressed.

3 Q. And further down he says, "The semantics of these API's
4 has also changed." What does it mean to say that you've
5 changed the semantics of an API?

6 A. Well "semantics" just means meaning. It's a fancy word
7 for meaning; that the definition, the action of what they do
8 was changed.

9 Q. And it says, in the next sentence, "Apps," and that's,
10 again, a reference to applications, right?

11 A. Right.

12 Q. "Apps that use these will come up in a new explorer
13 window, and the left-hand pane will only represent the
14 hierarchy that the application presents. Previous semantics
15 allowed Apps to show their heirarchy along with the file
16 systems and run in the same window."

17 In a non-technical sense, what is Mr. Struss saying
18 to you there?

19 A. Well, it doesn't solve -- this change they're talking
20 about here doesn't solve the robustness issue, but it just
21 means that you're more likely to understand if something is
22 extremely slow or if it cashes, you're more likely to
23 understand that you're in the third-party code rather than in
24 the Windows operating system code because they have a window,
25 a special -- a new window, a window that will show up on your

1 screen, as opposed to just staying inside the original shell
2 window.

3 Q. Now, I'd like to show you Demonstrative Number 184, and
4 I'll represent to you, Mr. Gates, that these are the options
5 that the Novell developers, who came to this courtroom to
6 testify, said that they had after learning, in October, 1994,
7 that Microsoft had decided to withdraw support for the
8 NameSpace extension API's in terms of creating a file open
9 dialog for the component applications of PerfectOffice.

10 And, with that understanding, does continuing to
11 call the NameSpace extension API's make any sense to you as
12 as an option in terms of creating a file open dialogue for
13 PerfectOffice?

14 A. No. They had already done a file open dialogue for
15 their Win 31 version, and they could have used that or they
16 could have updated it, you know, to do anything they wanted
17 with the names. When you're -- when the file open dialogue
18 is running, it's your code, and you can enumerate any way you
19 want, handle Windows, handle clicks any way you want, so it's
20 not important what extensions there are down in the operating
21 system. You are in control. So the change in the NameSpace
22 API should not have affected them in developing file open
23 dialogues for their applications at all.

24 Q. Well, what about the second and third options of
25 calling the Windows 95 common file open dialogue or writing

1 their own file open dialogue using common controls provided
2 in Windows 95? Didn't your decision make those two things
3 much more difficult?

4 A. In no way. You know, option 2 is exactly what most
5 other ISV's, like Lotus, who did the Ami word processor and
6 the 123 spreadsheet. Number 2 is what they did. Number 3 is
7 what Microsoft chose to do, and some other ISV's as well.
8 So, everyone had a choice between number 2 and 3, and we
9 actually made number 3 fairly straightforward because we had
10 sample code in the developer's kit, which would give you a
11 start towards doing some of the key parts of a file open
12 dialogue.

13 So, options 2 and 3 wouldn't be, you know, made
14 impossible or hurt in some big way by this change in the
15 NameSpace extension API's.

16 Q. Now, in turning back -- I hate to move backwards, but I
17 do want to direct your attention back to Defendant's Exhibit
18 84, to the second page of Mr. Struss' email to you under the
19 bullet that says -- just above number 2, it says, "If ISV's
20 want to duplicate the look and feel of the explorer, they
21 should look at the Chico App sample on MSDM, not these
22 interfaces."

23 What does that mean to you, Mr. Gates?

24 A. Yeah. That's -- this idea that there's a sample App
25 that makes it pretty straightforward to display name spaces

1 and do your -- whatever own extensions you want in your
2 application, which includes your file open dialogue, and so
3 Chico App is some sample code that would have made it
4 reasonably easy for somebody to do that.

5 Q. Now, I'd like to return to a question that I asked you
6 before, but I just want to make sure that I understand your
7 answer. From 1994, until the present day, has any
8 commercially released version of Microsoft Office, Microsoft
9 Excel, Microsoft Word, Microsoft PowerPoint, or Microsoft
10 Access ever used the NameSpace extension API's?

11 A. No.

12 Q. Now I'd like to -- I'd like you to look at what's been
13 marked as Demonstrative Exhibit 185, and I will represent to
14 you that the Novell developers who came to testify in this
15 trial said that they needed the NameSpace extension API's to
16 do two things. One was to create a file open dialogue
17 for the products on the left, WordPerfect's word processing
18 application and Quattro Pro's spreadsheet application. And
19 let me just pause there.

20 Based on your knowledge of what the NameSpace
21 extension API's did, is it correct to say that WordPerfect
22 Novell needed the NameSpace extension API's to create a file
23 open dialogue for either of the applications on the left?

24 A. Absolutely not. They had done file open dialogues for
25 previous versions, all of which were completely upward

1 compatible running on Windows 95.

2 Q. They also said, Mr. Gates, that they wanted to add
3 custom containers to the Windows Explorer for the five Novell
4 products listed on the right-hand side of this chart, the
5 Soft Solutions Document Management System, the WordPerfect
6 Email Client, the QuickFinder Search Engine, the
7 Presentations Clip Art Gallery and the FTP HTTP Browser that
8 they were working on.

9 Does it make sense to you, sir, that any of those
10 five products might want to add custom containers to the
11 Windows Explorer?

12 A. Yeah. The first two were -- used scenarios that, you
13 know, made sense; that is, the document management is a
14 system utility that you could add names to the bottom of that
15 hierarchy. Likewise, for the Email Client, you could look
16 and click down and see names of the folders and click in
17 those.

18 The other three, I don't know why they are saying
19 those things were linked to these NameSpace Extension API's.
20 Certainly a browser or a clip art gallery in a search engine,
21 those are applications that run separately and, you know, so
22 you just write the application and ask the user to install it
23 and run it. It's not -- it's not the kind of thing that fit
24 into that NameSpace heirarchy that the tree view would
25 display.

1 Q. Without access to the NameSpace extension API's, is it
2 correct that Novell's Document Management System and Email
3 Client would be incompatible with Windows 95?

4 A. Not at all. In fact, the -- many people shipped Email
5 Client, including Microsoft. Many people shipped Document
6 Management Systems, and none of them, in my awareness, used
7 those API's at all.

8 Q. Mr. Gates, when you decided to withdraw support for the
9 NameSpace extension API's in October of 1994, did you think
10 that you would be delaying the release of any applications
11 designed for use -- and I mean business productivity
12 applications designed for use with Windows 95?

13 A. No.

14 Q. Specifically, with regard to Novell, when you decided
15 to withdraw support for the NameSpace extension API's, did
16 you think that you would be delaying the release of
17 WordPerfect or Quattro Pro or PerfectOffice for Windows 95?

18 A. No.

19 MR. HOLLEY: Your Honor, I pass the witness.

20 THE COURT: Mr. Johnson.

21 MR. JOHNSON: Your Honor, we are going to need to
22 approach at this time.

23 THE COURT: Sure.

24 (Discussion among the Court and counsel at the bench.)

25 MR. JOHNSON: Your Honor, the reason I approach the

1 bench is because Microsoft has an objection to this exhibit,
2 both as to relevance and I think a 402 as well. And I intend
3 to start with this exhibit. Obviously Mr. Gates has given a
4 very long day of how great they were and what wonderful
5 products they built and how good they were to consumers,
6 etc., etc. And it appears to be the case that not everyone
7 within Microsoft thought that and that, clearly, Microsoft
8 had a serious image problem with their customers and with
9 other ISV's. I think it's fair cross examination.

10 MR. HOLLEY: Your Honor, this is another one of
11 these, you know, "what if" break-out scenarios. None of
12 these Microsoft executives had any responsibility for
13 Microsoft's corporate image. For example, Jean-Philippe
14 Courtois was the president of Microsoft Europe. Rick Rashid
15 ran Microsoft research. This is just an example of people
16 sitting around and doodling about things.

17 These are not documents created in the ordinary
18 course of Microsoft's business, and it is highly misleading
19 and inflammatory to suggest that this break-out session at
20 some management conference represents the company's view on
21 these topics.

22 MR. JOHNSON: Your Honor -- and I just looked at the
23 document. This is a Microsoft Management Conference, 1992.
24 It is plainly within the scope of Microsoft's business. To
25 suggest it's not within the scope of Microsoft's business is

1 facially incorrect, looking at it directly. Given what
2 Mr. Gates has told this jury about how wonderful they were
3 and what great products they built, I think it's fair cross
4 examination.

5 You may remember, Your Honor, that they went on and
6 on about our software being slow and buggy. And this one is
7 the very first bullet point under Our Image, indicates that
8 Microsoft's products were hard to use, buggy and late. It's
9 fair examination for us to posit that, they had some of the
10 exact same problems that they accused us of having, during
11 the course of this trial.

12 MR. HOLLEY: Well, given that all of the Novell
13 witnesses testified, without fail, that they loved
14 Microsoft's operating system products, this is quite
15 obviously nothing other than a smear campaign. This is not
16 going to change that testimony. The fact is that all of
17 their witnesses, as Your Honor has noted, all said that they
18 thought Windows 95 was a big advance and that they wanted to
19 write to it.

20 Lots of companies have very sort of no-holds-barred
21 internal debates about these sort of things, where strawmen
22 are set up and knocked down, but to suggest -- I don't recall
23 any deposition testimony where anyone established, you know,
24 who wrote this or why, despite the fact that some of these
25 people, at least Mr. Myhrvold, I think, was deposed. So it's

1 very unfair to come in now and say that this document is X or
2 Y. I know what it is because I've seen lots of them,
3 including the radical extreme document we looked at earlier
4 today, but there's no basis to say that this is an ordinary
5 planning document or reflects anyone's views about the
6 strength of the company.

7 MR. JOHNSON: Your Honor, I must say, for him to
8 suggest that he didn't do exactly the same thing, you will
9 remember he went into great detail with respect to
10 documents -- Novell documents and with respect to the
11 weaknesses that our own developers perceived in Novell.
12 These are weaknesses and statements of fact with respect to
13 what Microsoft's own people felt about Microsoft in 1992, and
14 they are exactly along the same genre, and it's a perfectly
15 fair subject of cross examination.

16 In fact, I think it would be highly inappropriate,
17 after given what they did with the buggy, slow software and
18 all they did to characterize our developers as, frankly,
19 stupid, and we have heard more of it today from Mr. Gates,
20 that anybody could have done this easily. It's fair to ask
21 these types of questions about their conduct at the time

22 THE COURT: You might be not surprised to know that
23 I'm going to split the baby. I'm not going to allow the
24 document in. If you want to cross examine Mr. Gates about --
25 if at a break-out session, were there discussions about

1 changing -- you know, were there concerns about the image --
2 if, at a break-out session, there were were concerns
3 expressed about Microsoft's image and things to do about
4 that, I'll allow that, but I'm not going to allow in the
5 document.

6 MR. JOHNSON: Your Honor, may I show it to him but
7 not publish it to jury?

8 THE COURT: Sure.

9 MR. JOHNSON: Thank you.

10 MR. HOLLEY: Thank you, Your Honor.

11 (Proceedings continued in open court.)

12 THE COURT: You may begin with your cross
13 examination.

14 MR. JOHNSON: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q. Good afternoon, Mr. Gates. Good to see you. You don't
18 have to say the same. I'm going to hand you now what has
19 been marked Plaintiff's Exhibit 15. If you could take a look
20 at that, sir?

21 THE COURT: And this is for identification only?

22 MR. JOHNSON: For identification only, yes, Your
23 Honor. Thank you.

24 Q. BY MR. JOHNSON: Mr. Gates, this Plaintiff's Exhibit 15
25 is -- reflects a Microsoft management conference held in

1 1992. The attendees, with respect to this particular
2 presentation, include Mr. Cameron Myhrvold. Can you tell us
3 who Mr. Myhrvold was, sir?

4 A. He was an employee of Microsoft.

5 Q. And what did he do?

6 A. Good question what he did. I'm not sure what he did.

7 Q. Well, the jury has already seen some of his testimony
8 where he talked a lot about actually, in the early days, late
9 1980's, being an evangelist for OS/2. Does that refresh your
10 recollection at all of some of the things that Mr. Myhrvold
11 did early on in his career?

12 A. It's possible. I -- he had a brother that worked
13 for the company. I knew what he did.

14 Q. So you just simply don't know what Mr. Cameron Myhrvold
15 did?

16 A. That's correct.

17 Q. Okay. How about Dawn Trudeau?

18 A. I'm not sure what she did.

19 Q. Rick Rashid?

20 A. He was involved in Microsoft research.

21 Q. John Jenkins?

22 A. Not sure.

23 Q. Mike Losh?

24 A. Never heard of him.

25 Q. Jean-Philippe Courtes -- Courtois?

1 A. Courtois. He was involved in Europe. He worked in
2 France.

3 Q. What did he do in France?

4 A. Well, he had many jobs over time. Eventually, he ran
5 the French subsidiary.

6 Q. As I mentioned, this conference was apparently held in
7 1992. Isn't it a fact, sir, if you would turn to page 1 of
8 this Exhibit 15, that Microsoft's image in 1992, was it's
9 products were hard to use, buggy, late?

10 A. No. We had quite a good image. We were always working
11 to make sure our products were more reliable. They weren't
12 perfect. A lot of them did have bugs, and we were working on
13 that. There were products that we had hoped to get out
14 sooner that shipped later. But, overall, I would say we had
15 quite a positive image.

16 Q. In fact, you testified about being very late with
17 Windows 95 for instance? It took a lot longer than you
18 thought, correct?

19 A. Versus our own expectation, yes. It was a
20 ground-breaking piece of work, and it -- it -- it was very
21 well received when we got it done.

22 Q. Isn't it a fact, Mr. Gates, that in 1992, Microsoft's
23 image was as a follower, not a leader in innovation?

24 A. That's not a fair summary. We were the very first
25 company to ever do microcomputer software, and what we were

1 doing with graphics interface Macintosh applications was --
2 had a great reception because of its innovative nature.

3 Q. Isn't it a fact, Mr. Gates, that Microsoft's image in
4 1992 was to be known for Machiavellian behavior?

5 A. No.

6 Q. So that you don't agree with these gentlemen with
7 respect to the Microsoft management conference in 1992?

8 A. I don't know. I don't have any recollection of a
9 Microsoft management conference in 1992. There were things
10 labeled that way, many of which I went to, many of which I
11 did not go to.

12 Q. Isn't it a fact, in 1992, Microsoft's image was that it
13 was known for bait-and-switch strategies?

14 A. No. I wouldn't say that in any way summarizes the
15 image people had of the company.

16 Q. You don't have any idea why these gentlemen that worked
17 for Microsoft would characterize your image in 1992 as
18 dealing with bait-and-switch strategies?

19 A. I don't know anything about the document you are
20 referring to.

21 Q. Isn't it a fact, Mr. Gates, that Microsoft's image in
22 1992 was to profit at the expense of others?

23 A. No. I wouldn't say that describes our overall image
24 correctly at all.

25 Q. Isn't it a fact, Mr. Gates, that Microsoft's image, in

1 1992, was one of being technology thieves and scavengers?

2 A. No. I don't think that was our -- describes our
3 general image at all.

4 Q. You don't know why it would be that these gentlemen
5 that worked for Microsoft would characterize Microsoft's
6 image in that way?

7 A. I don't know anything about people characterizing our
8 image that way.

9 Q. And, Mr. Gates, isn't it a fact that, in 1992,
10 Microsoft's image was that it had no regard for others'
11 concerns and profits?

12 A. No. I wouldn't say that characterized how people
13 thought about the company at that time, no.

14 Q. You can put that one aside, Mr. Gates. You mentioned
15 Mr. Paul Maritz in your testimony. Again, what was
16 Mr. Maritz's position in 1992? Let's start there.

17 A. I won't remember exactly what his job title was at all
18 points in time. Eventually he ran something that was called
19 the systems division that included the various activities
20 around Windows.

21 Q. Well, in 1992, isn't it a fact that Mr. Maritz was in
22 charge of all of Microsoft's Windows operating system
23 software?

24 A. I'm not sure if he was by then or if it was later, but
25 absolutely, at some point, he was.

1 Q. Do you recall that, by 1995, Mr. Maritz also took
2 responsibility for Microsoft's developer tools and server
3 application products?

4 A. Yeah. Paul -- there was a point when he got additional
5 responsibility that included those things. I would have
6 guessed it was earlier, but, yeah, at some point his
7 responsibilities were broadened.

8 Q. And that, by 1996, Mr. Maritz also had responsibility
9 for Microsoft's desktop applications software, including
10 Microsoft Office?

11 A. No. I -- I don't think that's right.

12 Q. Well, you do recall, sir, that Mr. Maritz testified on
13 behalf of Microsoft regarding competition in the operating
14 systems market in the case against Microsoft in Washington,
15 D.C.?

16 A. No.

17 Q. Mr. Gates, I'm going to hand you the direct testimony
18 of Paul Maritz in the case against Microsoft in Washington,
19 D.C. There you go.

20 A. What do you want me to do with it?

21 Q. We will be using it, hopefully, to refresh your
22 recollection. Let's start with what Mr. Maritz was doing on
23 behalf of Microsoft at the time. If you would look at
24 paragraph 3 of Mr. Maritz's testimony.

25 A. Yeah. I see that.

1 Q. And does that refresh your recollection that, in March
2 of 1992, Mr. Maritz assumed responsibility for all of
3 Microsoft's Windows operating systems software?

4 A. Yeah. As I said, that sounded correct to me. I
5 thought it was earlier than that, but...

6 Q. And, again, then, in 1995, Mr. Maritz also took
7 responsibility for Microsoft's developer tools and server
8 application products. Do you see that, in paragraph 3?

9 A. Yes, sir.

10 Q. And certainly you understand that Maritz -- Mr. Maritz
11 was sworn to tell the truth, the whole truth and nothing but
12 the truth, with respect to this testimony in the case against
13 Microsoft in Washington, D.C., right?

14 A. Yeah. I assume this is accurate.

15 Q. And, going on in that paragraph you can see that, by
16 1996, Mr. Maritz also had responsibility for Microsoft's
17 desktop applications software, including Microsoft Office.
18 Correct?

19 A. Yeah. I hadn't remembered that, but apparently so,
20 yes, sir.

21 Q. And would you agree that Mr. Maritz, as a result of his
22 experience, would be fully aware -- at the time he submitted
23 this 160 pages of direct testimony to the Court in that case,
24 that he would be fully aware of Microsoft's understanding of
25 the nature of competition in the software industry?

1 A. He'd have one point of view on it. He -- but he
2 wouldn't, you know, be the be-all and end-all on that
3 topic.

4 Q. Well, sir, I'm drawing your attention to paragraph 4 on
5 the next page. Mr. Maritz states, "As a result of my
6 experience, I am fully familiar with Microsoft's
7 understanding of the nature of competition in the software
8 industry."

9 Now, sir, you wouldn't disagree with Mr. Maritz on
10 that point, would you, sir?

11 MR. HOLLEY: Your Honor --

12 Q. BY MR. JOHNSON: It's not simply a point of view, sir,
13 it's Microsoft's understanding, correct?

14 MR. HOLLEY: Your Honor, this document is not an
15 exhibit, is not in evidence. Why is it being displayed to
16 the jury?

17 THE COURT: A very good question.

18 MR. JOHNSON: I can simply refer to it, Your Honor.

19 Q. BY MR. JOHNSON: I'm sorry, Mr. Gates, did you lose the
20 question?

21 A. No. I thought it was still being displayed.

22 Q. No.

23 THE COURT: No, it's not --

24 Q. BY MR. JOHNSON: Only to you, not to the jury.

25 A. So my display is different? Okay. Thank you.

1 Q. Yes. So, you would have no reason to disagree that
2 Mr. Maritz, in his direct testimony, was speaking with
3 respect to Microsoft's understanding of the nature of
4 competition in the software industry?

5 A. Well, as I said, I have not seen the document before.
6 Paul would have a certain level of expertise, but the idea of
7 saying he's fully familiar, that sounds a little strong to
8 me.

9 Q. Well, again, you wouldn't suggest to this jury that
10 Mr. Maritz didn't tell the full truth and nothing but the
11 truth in his testimony in the case in Washington, D.C.
12 against Microsoft, correct?

13 A. Well, if I'm of any value at all besides reading words,
14 it's to give an opinion. I wouldn't have said "fully
15 familiar" myself, so...

16 Q. And do you think that Mr. Maritz was exaggerating his
17 knowledge in that regard?

18 THE COURT: No. This isn't going -- ask Mr. Gates
19 about Mr. Gates' views, not about Mr. Maritz's.

20 MR. JOHNSON: Your Honor, I'm going to need to go
21 through some of this.

22 THE COURT: Maybe you will and maybe you won't, if
23 there's an objection. We'll see.

24 Q. BY MR. JOHNSON: Mr. Gates, Mr. Maritz would also be
25 fully aware of the business model adopted by Microsoft for

1 promoting Windows and the growth of the personal computer
2 industry, right?

3 A. He didn't run --

4 THE COURT: Just so we're clear, I'm not going to
5 allow Mr. Gates to be a medium for getting in testimony you
6 want from Mr. Maritz from the case in D.C. It's as simple as
7 that. So, with that guidance, feel free to question
8 Mr. Gates.

9 Q. BY MR. JOHNSON: Well, Mr. Gates, as a result of the
10 relentless advances in semiconductor technology and software
11 built upon it, the computer industry, in general, and the
12 software industry, in particular, is intensely competitive
13 and subject to rapid change. Would you agree with that, sir?

14 A. Yes, sir.

15 MR. HOLLEY: Your Honor, I just observe -- I don't
16 mind these questions and answers, because I kind of like
17 them, but this isn't impeachment or cross examination.

18 THE COURT: Well, he asked Mr. Gates, Mr. Gates' own
19 opinion on that.

20 MR. HOLLEY: Okay. As long as that's clear what we
21 are doing, I have no problem with it.

22 THE COURT: That's fine. I just don't want,
23 essentially, things from Mr. Maritz being read to Mr. Gates
24 saying, "Do you agree?" It's a whole different -- it's a
25 whole different thing if Mr. Gates has views which are

1 relevant and you don't object to, that's fine.

2 MR. HOLLEY: But, Your Honor, that's precisely what
3 Mr. Johnson did do.

4 THE COURT: Well, it sounds that way, but it's a
5 different question. Go ahead.

6 MR. JOHNSON: Thank you, Your Honor.

7 Q. BY MR. JOHNSON: Mr. Gates, you're familiar with the
8 fact that Microsoft files with the Securities and Exchange
9 Commission form 10-K's every single year, correct?

10 A. Yes.

11 Q. And, in fact, during the time period that we're talking
12 here, with you being the chief executive officer and chairman
13 of the board, you would have had to have signed those 10-K's
14 and swore to their accuracy?

15 A. Yeah. The regulations changed over time in terms of
16 how all that stuff worked, but, yes, we are responsible for
17 filing correct documents with the SEC.

18 Q. I show you now, Mr. Gates, what has been marked as
19 Plaintiff's Exhibit 580, which is a copy of Microsoft's 10-K
20 submission to the SEC for 1995. There you are, sir.

21 And, Your Honor, if there's no objection to this
22 public document, I'd like to display its contents on the
23 screen.

24 MR. HOLLEY: Well, if the point of this is to
25 supplement Novell's case-in-chief, I do object. There's a

1 motion pending about this, Your Honor.

2 MR. JOHNSON: Your Honor, Mr. Gates --

3 THE COURT: We'll display it right now. We'll rule
4 upon the motion in due course. I'm not -- if it's beyond the
5 scope, I'll strike it for purposes of your objection.

6 MR. HOLLEY: Thank you, Your Honor.

7 Q. BY MR. JOHNSON: First, Mr. Gates, if you would turn to
8 page 80 of this 10-K filing. And, as chairman of the board
9 and the chief executive officer of Microsoft, you signed this
10 10-K filing; is that correct, sir?

11 A. Yes.

12 Q. And then, if you would turn back to page 27 of this
13 10-K filing, under the heading, Competition. And you'll see
14 there that Microsoft stated that the microcomputer software
15 business is intensely competitive and subject to extremely
16 rapid technological change.

17 You would agree with that, sir, correct?

18 A. Yes.

19 Q. And that Microsoft faces formidable competition in all
20 areas of its business activity.

21 You would agree with that, too, sir, wouldn't you?

22 A. Yeah, in terms of telling people who are considering
23 investing in the company that they ought to consider the
24 nature of the business, yes.

25 Q. And then, if we turn to the next page, and talking

1 particularly about competition in the operating systems
2 market, Microsoft's operating systems products face
3 substantial competition from a number of sources. Correct?
4 And this is in 1995?

5 A. Yes. In a broad sense, there was a lot of different
6 places that competition could emerge from.

7 Q. And major competitors with respect to the operating
8 systems market were IBM, Apple Computer, Digital Equipment
9 Corporation and others, correct?

10 A. I see no problem with it. I mean --

11 Q. And these companies had developed operating systems
12 that they pre-install on computers of their own manufacture.
13 Correct?

14 A. Just referring to the form? One, two, three. Okay.

15 Q. If there are more, you can tell me about those.

16 A. Well, there's lots of companies in the states, so...

17 Q. Fine. Were there other operating system competitors in
18 the states in 1995?

19 A. There were other operating systems.

20 Q. Can you think of others besides those listed here with
21 respect to IBM, Apple Computer, Digital Equipment Corp?

22 A. Yeah. Later you'll get to it. Just keep going.

23 Q. So you're thinking about the UNIX systems?

24 A. Among other things. I mean, you can't just take single
25 sentences and say, like, they are the whole -- the whole

1 situation. But keep going. You're doing well.

2 Q. That's fair. That's fair, Mr. Gates.

3 A. Okay.

4 Q. And many of these operating system software products
5 are also licensed to third-party OEM's for pre-installation
6 on their machines, correct?

7 A. You read that correctly.

8 Q. And, in fact, that's what Microsoft does, too. It
9 sells Windows for pre-installation on OEM's machines, right?

10 A. That's not the only way we sell them.

11 Q. I didn't suggest it was, sir. I simply said to you,
12 it's true that Microsoft does the same thing. You sell
13 Windows for pre-installation by OEM's on their computers,
14 right?

15 A. Actually, license.

16 Q. And Microsoft's operating system products also compete
17 with UNIX-based operating systems from a wide range of
18 companies, including IBM, AT&T, Hewlett Packard, Sun
19 Microsystems, Novell, the Santa Cruz operation and others,
20 correct?

21 A. Yes.

22 Q. And variants of UNIX, which you were getting to,
23 actually run on a wide variety of computer platforms and, in
24 1995, were gaining increasing acceptance as desktop operating
25 systems. Correct?

1 A. Yes.

2 Q. And Microsoft anticipated, in 1995, that they would
3 face increased competition from network server operating
4 systems such as Novell Netware, right?

5 A. Yeah. We were telling people that was a possibility as
6 they thought about our securities filings.

7 Q. And Microsoft also understood that it was facing
8 increased competition from middleware products such as Lotus
9 Notes from IBM, correct?

10 A. Yeah. We're saying it's a possibility. We are not
11 able to guarantee that will necessarily happen because it
12 depends on what the other company does, but in terms of just
13 outlining all the possible risks we can enumerate in a
14 securities document, we mention that, yes.

15 Q. Well, this isn't phrased as a maybe, is it, Mr. Gates?
16 This says, "Microsoft's operating system products will face
17 increased competition." Doesn't it, sir?

18 A. Yeah. It's not clear to me how you can absolutely
19 predict that because we don't know what the actions of those
20 companies will be, but if you know the context of it, where
21 you're trying to tell people considering buying the stock to
22 consider all sorts of things that might happen, the fact that
23 it's phrased as a "will" actually makes perfect sense to me,
24 but when you take it out of the context of the document, you
25 say, did I know for sure that would we would face increased

1 competition? The answer is no. I didn't know for sure. It
2 depends on what the third parties ended up doing.

3 In fact, there's all sorts of risks that are
4 discussed in documents like this that never materialize, but
5 we outline them because of the nature of a 10-K filing.

6 Q. Mr. Gates, let me give to you now Microsoft's 10-K from
7 1996. And you agree with me, sir, on page 46, that, once
8 again, you signed this 10-K of Microsoft in 1986 (as spoken),
9 as chairman of the board of directors and chief executive
10 officer?

11 A. Yeah. I wonder why it got shorter.

12 Q. Is that a yes, sir?

13 A. Yes. It looks like I did sign this. Yes, sir.

14 Q. Thank you very much. And if you would turn, again, to
15 the section on competition, starting at page 30.

16 And this is PX-581 for the record, Your Honor.

17 And turning to the competition section again,
18 starting at page 30, and then actually I'd like you to turn
19 to page 31, where it talks about competition in operating
20 systems.

21 A. Well, what about 30?

22 Q. I'd like to go directly to operating systems on page
23 31. Okay? And I don't want to go through all the same
24 things again, but I want to point out some of the additional
25 claims to make sure you are on board with that. With respect

1 to the number of major competitors that are involved in
2 making operating systems that compete, there is a reference
3 to Sun Microsystems. Would that be the same as Sun that was
4 in the '95 10-K, sir?

5 A. Same company, yeah.

6 Q. I see there is now a reference to competition in the
7 operating system market from internet servers, from Netscape
8 and others. What was the nature of the competition coming
9 from internet servers from Netscape and others in the
10 operating systems market?

11 A. Well, I have the benefit of hindsight here. In fact,
12 Netscape never provided all that much competition with its
13 internet servers, but only in retrospect can I say that.

14 Q. So, certainly, it is true that in 1986 (as spoken),
15 Microsoft saw that Netscape was positioning itself --

16 THE COURT: Did you say -- did you say '86? Maybe
17 you corrected yourself.

18 MR. JOHNSON: I'm sorry, Your Honor, I meant '96.

19 THE COURT: Yeah.

20 MR. JOHNSON: Thank you, Your Honor.

21 Q. BY MR. JOHNSON: I'm sorry, Mr. Gates, did you get the
22 question?

23 A. Yeah. In the context of this document where we are
24 maybe even going overboard in enumerating every possible
25 threat to the company, we listed it here as another potential

1 source of competition.

2 Q. Well, certainly, sir, you tried to be complete and
3 accurate in your disclosures to the public, correct?

4 A. Yeah. The goal here is, if anything, to be overly
5 inclusive about threats, so somebody who is thinking about
6 the security has a broad view of the potential threats, some
7 of which we can now say, actually -- you know, it says here
8 will face increased competition. We can now say, with the
9 benefit of retrospect, we didn't face much competition from
10 those things

11 Q. Yes. And that is because of things that occurred in
12 the market in the 1990's, correct, sir?

13 A. Well, what these companies did or didn't do,
14 primarily.

15 Q. Oh. So it has to do with some of the anticompetitive
16 conduct that Microsoft engaged in against some of these
17 companies, correct?

18 A. No, sir.

19 Q. For instance, Netscape, sir?

20 A. Yes?

21 Q. Yes. Yes, sir. Microsoft engaged in anticompetitive
22 conduct against Netscape, which hurt them in the marketplace
23 for browsers, correct?

24 A. There was a lawsuit related to that, and there were
25 findings made along those lines, yes.

1 Q. Isn't it true, Mr. Gates, that in high technology
2 industries, such as computer software, the greatest
3 competitive threats to existing products frequently comes not
4 from similar products; that is, operating systems that
5 compete directly with Windows, but rather from wholly new
6 products that render entire product categories or technology
7 approaches obsolete?

8 A. It's always a possibility. I can't think of a case
9 where it actually happened, but it's one of those things you
10 always want to watch out for that could happen.

11 Q. And the -- these new technologies which arise in the
12 marketplace are sometimes referred to as inflection points,
13 correct?

14 A. Well, some people use that term, yes.

15 Q. And one such inflection point was the move from 16-bit
16 software to 32-bit operating systems, correct?

17 A. Yeah. The key move was more the move of the interface
18 from character mode to graphical. It's hard to separate
19 those out because they came -- they weren't separated from
20 each other. In fact, multi-tasking came in at the same time.
21 Rich Security came in at the same time. Broad Device came
22 in. So operating systems were evolving in that time period
23 in a lot of different dimensions.

24 Q. And you would also agree that another such inflection
25 point was the internet?

1 A. Yeah. The -- if you think about the inter -- well, can
2 you clarify the time frame you're talking about?

3 Q. I'm talking about 1994, '95.

4 A. Yes. The arrival of the internet and various things
5 about the internet was a very important development for the
6 software industry.

7 Q. Now, in the 1995 to 1999 time frame, Windows faced
8 competition from a number of competing operating systems,
9 and, in particular, IBM's OS/2, B's BeOS -- B, small e,
10 capital O, capital S -- Sun's Solaris and Linux, correct?

11 A. Well, the amount of competition by that time frame
12 wasn't super high from some of those.

13 Q. Well, regardless of the amount, sir, there was
14 competition from those operating systems, correct?

15 A. Well, what's your threshold? You know, for something
16 like BeOS, it has to be very low because they never got
17 enough applications to be of broad interest.

18 Q. If you would pick up Mr. Maritz's testimony and take a
19 look at paragraph 29, please.

20 THE COURT: Again, I don't see why this is being
21 displayed. Oh. It's not. I'm sorry. I'm sorry,
22 Mr. Goldberg.

23 Q. BY MR. JOHNSON: Are you with me, Mr. Gates?

24 A. No.

25 Q. You need to take a look at the exhibit that's on your

1 pile there, Mr. Maritz's testimony.

2 MR. SCHMIDTLEIN: It should be on his screen.

3 THE COURT: It's not on your screen, Mr. Gates?

4 THE WITNESS: It's on the screen, yeah.

5 Q. BY MR. JOHNSON: Okay. So you can read it there,
6 paragraph 29? I think it's on the screen in front of you,
7 Mr. Gates.

8 A. Yeah. I'm trying to find the date.

9 Q. The date of this testimony is January, 1999.

10 A. So, when you asked me the question previously, what
11 time frame did you give me?

12 Q. I gave you a time frame of 1995 to 1999. Certainly,
13 all these -- all these operating systems existed during that
14 time frame, right?

15 A. Maybe I misheard you. I'm sorry.

16 THE COURT: No. I think it had been more limited in
17 time. So just assume that prior question was more narrow in
18 time, but answer his present question up through 1999.

19 THE WITNESS: What is the question?

20 Q. BY MR. JOHNSON: The question, Mr. Gates, as I asked it
21 before, is, during the period 1995 through 1999, or at least
22 up to January of 1999, Windows faced competition from a
23 number of competing operating systems such as Apple's Mac OS
24 B's BeOS and various flavors of the UNIX operating system and
25 the Linux operating system distributed by such companies as

1 Caldera and Red Hat Software and IBM's OS/2 Warp?

2 A. Yes. If you set the threshold low enough,
3 that's correct.

4 Q. And, by January of 1999, the Linux operating system was
5 widely perceived to be a very serious emerging competitor of
6 Windows, correct, sir?

7 A. Well, I can't recall exactly what I thought at the
8 time. I know that, up until now, which this is 2011, that
9 Linux has not taken significant share away from the Windows
10 operating system, so I -- maybe my thinking is clouded by
11 knowing what happened subsequently.

12 Q. All right. Now, Mr. Gates, I'm referring to the time
13 period in early 1999, specifically when Mr. Maritz gave his
14 testimony. Mr. Maritz states that today millions of people
15 run Linux. You don't disagree with that, do you, sir, as of
16 1999, January?

17 A. It's possibly correct. I'm not sure.

18 Q. And it was also true as of that date, Mr. Gates, the
19 major computer manufacturers were offering computers with
20 Linux pre-installed, and major applications were available
21 for Linux at that time, correct, sir?

22 A. I'd have to go back and look.

23 Q. You don't have any reason to disagree with Mr. Maritz
24 about that, do you, sir?

25 A. Well, what I do know is that Linux never emerged to

1 gain much market share, and so -- so maybe I'm -- my
2 recollection is clouded by knowing what actually happened.

3 Q. Well, I don't want your recollection to be clouded.
4 I'd like for you to try to stay with me in the time frame
5 we're talking about, which is January of 1999.

6 A. Okay.

7 Q. So, if you stay with me in that time period, you
8 certainly would have no reason to disagree with Mr. Maritz
9 that, during that time period, there were millions of people
10 running Linux and major computer manufacturers were offering
11 computers with Linux pre-installed and major applications
12 were available for Linux, correct?

13 A. No. I'd have to go back and check.

14 Q. You really don't think Mr. Maritz would have not told
15 the truth here, do you, sir?

16 A. Are we -- I have no particular expertise on that.

17 THE COURT: He has given his answer. Move on to
18 something else.

19 Q. BY MR. JOHNSON: Isn't it a fact, sir, that by January,
20 1999, Linux was an operating system that consisted of several
21 million lines of code, comparable in size, capability and
22 complexity to Microsoft's Windows 98 and Windows NT operating
23 systems?

24 A. Yeah. It absolutely consisted of millions of lines of
25 code.

1 MR. HOLLEY: Your Honor, I'll just object on scope
2 grounds. I didn't mention, as far as I recall, anything that
3 happened after --

4 THE COURT: Well, I wouldn't -- I wouldn't worry
5 about the scope issue except for the pending motion. I
6 realize the two are related. So I -- this is being taken
7 subject to a motion to strike.

8 MR. HOLLEY: Thank you, Your Honor.

9 Q. BY MR. JOHNSON: I'm sorry, Mr. Gates, was that a yes?

10 A. I said, yes, it had millions of lines of code. What
11 was the other part?

12 Q. My question wasn't limited to millions of lines of
13 code. I'll give it to you again. By January of 1999, Linux
14 was an operating system that consisted of several million
15 lines of code, comparable in size, capability and complexity
16 to Microsoft's Windows 98 and Windows NT operating systems?

17 A. You could definitely compare it. There were some
18 significant differences.

19 Q. Were they comparable in size, capability and
20 complexity, sir?

21 A. No. There were significant differences.

22 Q. I understand that, sir. My question to you is, were
23 they comparable in size, capability and complexity to
24 Microsoft's Windows 98 and Microsoft's Windows NT operating
25 system?

1 A. Yeah, you could compare them, but there were a lot of
2 things that were very different between the different
3 systems.

4 Q. And you would agree with me, sir, that very little had
5 changed between Windows 95 and Windows 98, correct?

6 A. A lot -- a lot changed in terms of what was going on in
7 the software industry. Windows 98, itself, was a fairly
8 modest change to the Windows code base. It wasn't a gigantic
9 set of changes.

10 Q. In fact, sir, you would agree with me that Windows 98
11 was a very minor release?

12 A. I think that goes a little bit too far, but I would say
13 it was not a critical release. It was a -- I would say
14 minor.

15 Q. You do recall, Mr. Gates, having your deposition taken
16 in this case? I had the pleasure of asking the questions.

17 A. I remember that, yes.

18 THE COURT: I think he just -- I might have misheard
19 him. I think he just agreed that -- that he would call it a
20 minor change. I'm just trying to save you time.

21 MR. JOHNSON: Your Honor, no, he varied from that.

22 I want to make sure we have --

23 THE COURT: Okay. I thought he came back to it.

24 Q. BY MR. JOHNSON: Mr. Gates, I'm handing you now volume
25 II of your deposition that was taken on May 19, 2009, in

1 Seattle, Washington.

2 MR. HOLLEY: Your Honor, again, unless this is
3 a part of this deposition which was played for the jury, and
4 I don't know whether it was or wasn't, I don't think it
5 should be published to the jury.

6 MR. JOHNSON: Your Honor, this is cross examination.
7 I'm culling out --

8 THE COURT: If this is his own deposition, I don't
9 see -- I mean, you might be right, but I think it probably
10 moves things along. This is his own deposition. Go ahead.

11 MR. HOLLEY: Okay.

12 Q. BY MR. JOHNSON: Do you recall, sir, on page 355 to
13 356, 355 line 21, to 336 (as spoken) line 6, do you recall
14 being asked the following question and giving the following
15 answer?

16 A. I don't recall. It appears that's what was asked and
17 that's what was answered, so, at that time, apparently I
18 called it a very minor release.

19 Q. And Windows 98 was not a major change, correct?

20 A. Yeah. I absolutely would say it was not a major
21 change.

22 Q. And there was very little that changed between Windows
23 95 and Windows 98, right?

24 A. That's right. Today I decided to characterize it as a
25 minor release instead of a very minor release. I think minor

1 release is correct, but this is what I testified.

2 Q. In 1998, Mr. Gates, wasn't it a fact that major
3 computer manufacturers were offering computers with Linux
4 pre-installed?

5 A. I don't recall any specific manufacturers that did
6 so.

7 Q. How about Sun Microsystems, Dell, Gateway, Toshiba, IBM
8 and Hitachi?

9 A. Yeah. I think you're confusing UNIX and Linux because
10 the ones that were offering UNIX-based capability, they were
11 not offering Linux.

12 Q. If you would turn to Mr. Maritz's testimony in the case
13 against Microsoft in Washington, D.C., specifically paragraph
14 226, Mr. Maritz testifies, Mr. Gates, quote, "Leading
15 computer manufacturers -- "

16 THE COURT: Don't read it in. The question is, does
17 this -- does this change his recollection? That's the
18 appropriate question.

19 Q. BY MR. JOHNSON: Mr. Gates, if you would read the first
20 sentence of Mr. Maritz's testimony in the case against
21 Microsoft in Washington, D.C. and ask if that refreshes your
22 recollection that there were major computer manufactures such
23 as Sun Microsystems, Dell, Gateway, Toshiba, IBM and Hitachi
24 offering computers or having announced they will soon offer
25 computers with Linux pre-installed?

1 A. Yeah. I don't remember anybody -- any of those people
2 actually offering computers with Linux pre-installed.

3 Q. And isn't it a fact, sir, that many smaller computer
4 manufacturers offered Linux work stations as well during that
5 time period?

6 A. There were probably some, yes.

7 Q. Now, by the beginning of 1999, major applications were
8 available on Linux operating systems, correct?

9 A. There were -- there were some major applications that
10 were available, and there were a lot that were not.

11 Q. Well, certainly you recall that Corel offered a version
12 of its WordPerfect suite of applications on the Linux
13 platform at that time?

14 A. I don't know for sure, but I wouldn't -- it may well
15 be, yes, sir.

16 Q. And, in fact, Lotus Notes also offered its product on
17 the Linux platform by the beginning of 1999, correct?

18 A. I don't remember that.

19 Q. And it's also true, isn't it, Mr. Gates, that
20 Netscape's Client software was also available on Linux
21 operating systems by the beginning of 1999?

22 A. I think that's right.

23 THE COURT: Let's stop. And I'll stay here with
24 counsel and we'll finish up the unfinished business from last
25 week. And have a nice afternoon. See you all at 8:00

1 o'clock in the morning.

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