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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

NOVELL, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:04-CV-1045 JFM
)	
MICROSOFT CORPORATION,)	
)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

DATE: NOVEMBER 22, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME XX

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1 NOVEMBER 22, 2011

SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 * * *

4 THE COURT: Good morning, everybody.

5 ALL COUNSEL: Good morning, Your Honor.

6 THE COURT: Let's get the jury.

7 Mr. Gates, if you're here, you might as well come on
8 up.

9 (Jury brought into the courtroom.)

10 THE COURT: Good morning. Thank you for your
11 promptness. Mr. Johnson and Mr. Gates is here. Let's get
12 started.

13 MR. JOHNSON: Thank you very much, Your Honor.

14 Q. BY MR. JOHNSON: Good morning, Mr. Gates.

15 A. Good morning.

16 Q. I'd like to return to the exhibit you were shown on
17 direct testimony yesterday, DX 297, please. You testified
18 that in the Windows world, WordPerfect was not nearly as good
19 as Microsoft's Word; is that correct, sir?

20 A. Can I have a copy?

21 Q. Do you need your transcript to know that that's what
22 you said, sir?

23 A. No. No.

24 Q. I'm just asking you not what the document says, but
25 what you testified to.

1 A. I thought you were referring to a document.

2 Q. No. This was the document you were shown when you gave
3 the testimony that WordPerfect was not nearly as good as
4 Microsoft's Word; is that correct?

5 THE COURT: He can't see it.

6 MR. HOLLEY: Your Honor, if everyone else in the
7 courtroom is going to look at the document, Mr. Gates needs
8 to be able to see it on his screen.

9 MR. JOHNSON: I'm sorry. It's not on your screen?

10 THE COURT: Yeah. He can't read it. Just give him
11 a hard copy.

12 MR. JOHNSON: Sorry.

13 THE WITNESS: Okay. Go ahead.

14 Q. BY MR. JOHNSON: Yes. Do you recall yesterday that you
15 testified that, in the Windows world, WordPerfect was not
16 nearly as good as Microsoft's Word, correct?

17 A. Yeah. I said that the Info World review had given the
18 Microsoft product a higher rating of an 8.2 and the
19 WordPerfect product a low rating of 6.0. That's for their
20 Windows word processor.

21 Q. And, Mr. Gates, do you recall that the industry, in
22 fact, generally lauded WordPerfect's robust and
23 feature-filled Windows word processor?

24 A. I'm sure if you were to carefully look around, you
25 might have found someone who said that, but I don't know of

1 any comparative review that didn't show the Microsoft product
2 was far superior to the WordPerfect product.

3 Q. Well, Mr. Gates, isn't it a fact that Microsoft said
4 that about WordPerfect 6.0?

5 A. Well, I'm not -- when you say Microsoft said something,
6 I'm not sure what you mean by that. There's all sorts of
7 people at Microsoft. We felt -- well, I'll speak for myself.
8 All the evidence I saw reinforced the fact that they had
9 started late to do graphical applications and that what
10 InfoWorld was saying was the fact -- and, in fact, that's --
11 the marketplace also is another confirming data point on
12 that.

13 You know, when their product shipped, they never
14 achieved anything like what they had in the MS-DOS
15 environment.

16 Q. Mr. Gates, Microsoft routinely engages in competitive
17 product analysis with respect to competitors' products,
18 correct?

19 A. Yeah. Microsoft had a culture of always, you know,
20 touting what competitors did well, worrying that competitors
21 would do things very well, you know, and particularly if you
22 worked in a product review, you would say my competitor is
23 doing very well. We should focus more on the competitor I
24 care about about. We had a strong awareness and always
25 assumed that competitors would do good work and were very

1 self critical in order to push ourselves to do our best.

2 Q. And, in fact, Microsoft engaged in a competitive
3 product analysis of WordPerfect 6.0, correct, sir?

4 A. Sure. All sorts of employees did all sorts of things
5 with various versions of WordPerfect. I don't know if
6 specifically one related to WordPerfect 6.0.

7 Q. Let me show you, Mr. Gates, what has been marked
8 Plaintiff's Exhibit 378. Do you recognize this document,
9 sir?

10 A. No, sir.

11 Q. This is the WordPerfect for Windows 6.0 competitive
12 product analysis done by Microsoft, correct, sir?

13 A. Well, I'm sure there are tons of documents of this
14 nature done on every different competitor's products at
15 various points in time.

16 Q. Mr. Gates, could you answer the simple question, is
17 what the exhibit before you, is this a competitive product
18 analysis of WordPerfect for Windows 6.0?

19 A. Would you like me to look at the document?

20 Q. Sure. If you need to do that, you can do that now.

21 A. I've never seen it before. If the question is, are you
22 correctly reading the words on the front page? The answer
23 is, absolutely.

24 Q. Well sir, if you need to look at the document more to
25 answer the question of whether what we are looking at is a

1 competitive product analysis of WordPerfect 6.0, I want you
2 to look at that document.

3 A. Okay. To know what a document is, I do need time to
4 look at it.

5 Q. Take your time, sir.

6 A. Okay. Now I've looked at it. I mean, I haven't read
7 every page, but it's talking -- it looks like somebody is
8 talking about a recent release of WordPerfect that came out
9 in 1993.

10 Q. Yes, sir. That would be WordPerfect 6.0. And my
11 question to you was, is the document before you a competitive
12 product analysis of WordPerfect for Windows 6.0 done by
13 Microsoft?

14 A. It appears to be a document done by Microsoft. It's
15 kind of an unusual document. I've never seen one in this
16 format before. It's talking about WordPerfect, but it --
17 it's more talking about their positioning, their ads, their
18 distribution, things like that. It's not -- it's not focused
19 on the product features as much as it is on what's going on
20 in the marketplace.

21 Q. All right. Well, let's see what this document is
22 focused on. If you will turn to the first page, please,
23 under Overview.

24 Would you bring that up, Mr. Goldberg.

25 This document -- I'm reading from the top there.

1 "This document is designed to give the reader a
2 comprehensive look at WordPerfect for Windows 6.0 and how it
3 compares to Word for Windows 6.0. This evaluation will cover
4 noteworthy differences and how the two applications operate,
5 as well as their relative strengths and weaknesses." Close
6 quote.

7 So we can agree, sir, that this document was
8 designed to do just that?

9 A. No. The document has more than that in it. It's not
10 necessarily the case that that sentence says exactly what's
11 in here. It does talk about the lack of design and poor
12 performance quite a bit. It's got -- it's got a lot of sales
13 information and advertising information as well.

14 Q. Mr. Gates, in the background section, the document
15 states, quote, "The industry generally lauded WordPerfect's
16 robust and feature-filled Windows word processor, as it seems
17 like WordPerfect finally created an application that
18 exploited the Windows platform," close quote.

19 Does that refresh your recollection, Mr. Gates, that
20 Microsoft, itself, stated that the industry generally lauded
21 WordPerfect's robust and feature-filled Windows word
22 processor?

23 A. I think I'd have to conclude that the document you've
24 handed me has some inconsistencies in it because, if you turn
25 to page 26 --

1 Q. Mr. Gates --

2 A. -- it talks about exactly the same topic, and you'd
3 come to a very different conclusion. Let's look at page
4 26.

5 MR. JOHNSON: Your Honor, could I get the witness
6 to at least answer my question before he goes off on a -- his
7 own tangent?

8 MR. HOLLEY: Your Honor, I object to that
9 commentary.

10 THE COURT: I think he's answering -- let's look at
11 page 26 and see whether he's answering your question.

12 Q. BY MR. JOHNSON: What do you want to add to your
13 answer, Mr. Gates, as to whether the Microsoft recognized
14 that the industry generally lauded WordPerfect's robust and
15 feature-filled Windows word processor?

16 A. Well, what I'm seeing on page 26, it says, "Two things
17 are clear about WordPerfect for Windows 6.0. It has almost
18 everything. It is poorly design. Virtually every feature,
19 variable, or arcane measurement known to be at some point
20 associated with any word processing related task can be found
21 somewhere in the depths of this product. But it would appear
22 that no one sat down and thought through whether or not the
23 features would be truly useful/practical, or if the
24 implementation was reasonable for most users.

25 The program tends to send the user into totally

1 unnecessary dialogs or through extra layers of interface
2 before letting a user complete a task. For example, to
3 cut/copy a selection in a table, the program gives the user a
4 dialog box verifying cut/copy selection before it will do the
5 task. Formatting or reformatting is not intelligently
6 applied. Users have know SQL to use the SQL drivers shipped
7 with the product.

8 Needless to say, the result of having so much with
9 so little design is a bulky, slow, buggy product that,
10 without 6.0a, is riddled with GP fault problems for even
11 simple tasks such as printing. If WordPerfect buckled down
12 and streamlined/enhanced the design of their WordPerfect for
13 Windows 6.0 product, it could be amazing.

14 The tragedy in all the frustration with WordPerfect
15 6.0's initial release is that it so seldom resulted in people
16 looking/switching to Word 6.0. There are countless letters
17 and postings of irate customers that say they will simply go
18 back to earlier versions of WordPerfect until they have their
19 act together."

20 And there's lot more here that suggests that your
21 simple summary doesn't really give the full conclusion of the
22 document.

23 Q. Yes, sir. And my question to you was not the
24 criticisms in the document by Microsoft. My question to you
25 was whether Microsoft recognized that the industry generally

1 lauded WordPerfect's robust and feature-filled Windows word
2 processor?

3 A. No. I would say when you have countless letters and
4 postings of irate customers, that's not evidence of industry
5 acclaim.

6 Q. All right, sir. And in the background section, again,
7 continuing in the second paragraph. "WordPerfect's word
8 processing sales still rival those of Word." You would agree
9 with that, sir?

10 A. If you included their DOS sales, which had always been
11 quite strong, yes, but, in the Windows area, they never
12 matched the sales level of the Microsoft product.

13 Q. And it goes on to say, "In the past year WordPerfect
14 For Windows unit shipments increased by 60 percent, while
15 Word's increased by only 6 percent." You wouldn't disagree
16 with that either, would you, Mr. Gates?

17 A. Yeah. WordPerfect had such a small base with the
18 previous version that increasing 60 percent is lot easier
19 than increasing a large number.

20 Q. And it goes to say, "WordPerfect's combined DOS and
21 Windows word processor shipments also beat out Word's
22 combined Office Word shipment by almost 10 percent."

23 You wouldn't disagree with that either, would you,
24 sir?

25 A. Yeah. That relates to the DOS, yes.

1 Q. And, in fact, the document goes onto say, "The point
2 is, WordPerfect's success up to now shows it is making
3 inroads in the Windows market and not just by converting
4 their DOS installed base." Correct, sir?

5 A. That's right, they had gone from selling zero copies to
6 selling well more than zero.

7 Q. Let's take a look at this document on page 21.

8 A. There's some real doozies in this document.

9 Q. And I refer you to the section on document and file
10 management, sir. It states. "Two standouts here,
11 Quickfinder and the ability to create a directory from the
12 open file dialogue box. Users love both." Do you see that,
13 sir?

14 A. Yes, sir. It looks like -- it looks like WordPerfect
15 was able to write an open file dialog. That's amazing. How
16 did they do it?

17 Q. Mr. Gates, we're going to the next bullet point, sir.
18 The speed of Quickfinder's indexed searches rival those of
19 stand-alone -- stand-alone packages. For example, a search
20 of 337 files, 24 millibytes (as spoken) of data, takes about
21 a second using Quickfinder. The same search without an
22 index, what Word's Find file does, takes about two minutes.

23 Does that refresh your recollection, Mr. Gates, that
24 WordPerfect's Quickfinder technology was far superior to
25 anything Word had at the time?

1 A. Yeah. We did the search function outside of the file
2 open dialogue box. We didn't do it inside the file open
3 dialogue box. But it looks here like they were able to do a
4 lot in their file open dialogue box. That's talking about
5 their ability to write a good file open dialogue box and, of
6 course, this is all -- you know, in an earlier time frame,
7 without any NameSpace extension API's.

8 Q. Now, Mr. Gates, yesterday you testified that it would
9 have made sense to add document management as a utility into
10 the Windows Explorer, correct?

11 A. No. I said it was one of the things you might -- you
12 might -- now you're switching time frames. Now you're
13 talking about Windows 95?

14 Q. No. I'm talking about your testimony yesterday,
15 Mr. Gates.

16 A. Yeah. But my testimony -- that testimony related to a
17 particular time frame that's different than the time frame of
18 this document.

19 Q. Okay. So stated, different time frame.

20 A. Okay.

21 Q. You told this jury that it would have made sense to add
22 document management as a utility into the Windows Explorer,
23 and you were speaking of Windows 95, correct?

24 A. No. I simply said that it's -- I didn't say that you
25 needed to or anything like that. It's packages other than

1 those, you wouldn't think of using those extensions. Those
2 are the ones that you might choose to, but most document
3 management packages never did anything like that. Are we
4 confusing document management with file open dialogue, with
5 open dialog?

6 Q. I'd like to refer you, Mr. Gates, to your testimony
7 yesterday on page 2827, lines 2 through 15. "Question. They
8 also -- "

9 A. Yeah. Okay. There's something where that is readable
10 compared to this. I don't know why. Yesterday this was
11 perfectly readable.

12 THE COURT: Do you have a hard copy? I don't know
13 what's wrong. Here's a man who might know.

14 MR. GOLDBERG: Let me take a look over here.

15 THE WITNESS: It's getting better.

16 MR. GOLDBERG: Hang on one second.

17 Q. BY MR. JOHNSON: Can you read it now, Mr. Gates?

18 THE COURT: I don't think so.

19 MR. GOLDBERG: Did that fix it at all?

20 THE WITNESS: Yeah. You could add names to the
21 bottom of that heirarchy.

22 Q. BY MR. JOHNSON: Right. And document management was
23 what you were talking about; correct, sir?

24 A. I said there were two scenarios where you could, but it
25 wouldn't be necessary or important or anything like that,

1 but, yes, you absolutely could add names to the bottom of the
2 heirarchy.

3 Q. That would be one of the functions that you could use
4 the NameSpace extensions for, correct?

5 A. You could, yes.

6 Q. Now, going back to the DX 297 for a moment, where you
7 are talking about winning the InfoWorld review, that was
8 dated -- that document was dated February 7, 1994, correct?

9 A. Yes.

10 Q. I'd like to show you what has been marked PX 162-A,
11 which is an email you wrote less than two months later,
12 titled WordPerfect 6.0-A. You sent this email to Mr. Pete
13 Higgins and Mike Maples, correct?

14 A. It appears that I did, yes, sir.

15 Q. And both those gentlemen were part of the office group,
16 correct?

17 A. That's right.

18 Q. And your email to them states, "I am amazed at their
19 responsiveness. This is very scary and somewhat depressing.
20 This is as much as we plan to do for 1995," with two
21 exclamation points, "a lot of work in this release." Close
22 quote.

23 Mr. Gates, does this refresh your recollection that,
24 in fact, WordPerfect had released a word processor for
25 Windows in early 1994 that was as much as Microsoft had

1 planned do for all of 1995?

2 A. No. This is talking about a specific subset of
3 WordPerfect features. So you shouldn't interpret that to
4 mean that their overall product matched what Word was doing,
5 so no.

6 Q. I'm sorry. I don't see anywhere in your email to these
7 gentlemen that this was about some subset of features. Can
8 you show that to me, sir?

9 A. You need to see the predecessor emails and understand
10 what the context of this is. This is about AutoCorrect and
11 AutoSelect. Just look at the emails that come before.

12 Q. You've got it in front of you, Mr. Gates.

13 A. No. You have to know what email I'm responding to.

14 Q. Oh. And you're saying you've seen the email that you
15 are responding to recently?

16 A. No. I see that -- okay. There is one email that I'm
17 responding to that you do see, and there's a whole bunch in
18 here that say redacted, redacted, redacted. The one you can
19 see makes it clear that we are talking about AutoCorrect and
20 AutoSelect in particular and so it appears that in the area
21 of AutoCorrect and AutoSelect, I was impressed at their
22 responsiveness when I wrote the email.

23 Q. Okay.

24 A. But to understand the context, what is it about
25 AutoCorrect and AutoSelect, which are a fairly small part of

1 the word processor? You'd want to see the whole chain of
2 emails. Why don't you show the other email, the email that
3 this is responding to?

4 Q. Mr. Gates --

5 A. Why don't you put that up?

6 Q. Mr. Gates, let's move on.

7 A. Okay.

8 Q. I believe you also testified yesterday that you thought
9 WordPerfect did not have a real suite strategy, correct?

10 A. That's what I said. They had many suite strategies,
11 none of which were satisfactory to the marketplace.

12 Q. Let's put up Defendant's Exhibit 315, which you were
13 shown yesterday. I don't know if -- you may not have that
14 copy up there?

15 A. Again, it's completely unreadable.

16 Q. That's why I'm giving you a paper copy, Mr. Gates. Can
17 you read that?

18 A. No. See what it's like when --

19 Q. No, the highlight. Can you read the highlight?

20 A. The highlight is better because it's zooming in. The
21 highlight wasn't up when I said I couldn't read it.

22 Q. Do you recall this document, Mr. Gates?

23 A. Yeah. This is the document where, at the top, I talk
24 about the potential negatives of what happens if they execute
25 well, and then I talk, in the business unknowns about the

1 risks they have of how difficult the execution will be, so,
2 yes, I recognize this.

3 Q. Okay. And that's exactly where I wanted to go,
4 Mr. Gates. You said, under Office, "If Novell executes well,
5 they will be able to turn their office suite into a serious
6 contender, which could force price and volume cuts in our
7 office business." That's what you stated, correct?

8 A. That's true. It didn't happen, but I was concerned
9 that it would.

10 Q. Mr. Gates, do you recall that Novell released a suite
11 called PerfectOffice 3.0 in December of 1994, which included
12 WordPerfect and Quattro Pro?

13 A. They released a lot of suite products, including
14 PerfectOffice, yes. They did many releases trying to get the
15 suite -- their suite strategy correct.

16 Q. Do you recall that, in fact, Novell did execute well
17 and turned their office suite into a serious contender?

18 A. They -- they had some real problems with Quattro Pro
19 which held their suite strategy back pretty severely. What
20 happened was that the UI of Quattro Pro was so different than
21 that of WordPerfect, because it had been developed at
22 Borland, and Borland had their own way of looking at things
23 and doing things, and for some reason I didn't understand,
24 they never got the engineering staff organized to make the
25 Quattro Pro UI consistent with the WordPerfect UI.

1 And the disorganization that we talked about -- what
2 was the exhibit -- about the WordPerfect thing, the way that
3 the UI was disorganized, WordPerfect never really fixed that
4 problem. So, yes, they had suites in the marketplace, but,
5 no, those suites did not achieve high levels of sales volume.

6 Q. Let's return again to Defendant's Exhibit 315. I don't
7 want to leave that document quite yet. And if we go down
8 there and highlight the section Technology Scale. You state,
9 quote, "Initiatives to promote anti-Microsoft
10 platforms/API's/object models becomes easier to coordinate
11 because fewer companies are involved. Novell itself will be
12 able to set more standards for Workgroup, Document
13 Management, Image Systems and all of the services they have
14 been moving towards."

15 So it's true, isn't it, Mr. Gates, that, at the time
16 of this merger, you viewed Novell as a threat to Microsoft's
17 platform in API and object models?

18 A. I think the memo speaks for itself. I -- what I said
19 in the memo is correct.

20 Q. So, it's not correct that you viewed Novell as a threat
21 to your platform, API's and object models?

22 A. I felt that they would be able to set more standards
23 for Workgroup, Document Management Image Systems and all of
24 the services they had been working towards.

25 Q. Now, you testified yesterday that InfoWorld was the

1 computer magazine whose reviews were the most watched and the
2 most important at this time, correct, sir?

3 A. Yes, sir.

4 Q. I'd like to show you what has been marked PX-297, which
5 is a review in InfoWorld titled, PerfectOffice Nearly Lives
6 Up To Its Name. I'd like you to take a look at the first and
7 second paragraphs of this review, Mr. Gates. And do you see
8 there that InfoWorld agreed that Novell's revamp of its
9 Borland Office is the best set of integrated applications to
10 come down the pipe yet?

11 A. Yeah. I -- do you want me to look at this? It looks
12 like a positive review of PerfectOffice, but I --

13 Q. No, I'd like you to answer my question.

14 A. Okay. Your reading skill is excellent. You read that
15 sentence properly.

16 Q. And, sir they go onto say that PerfectOffice was a
17 terrific assortment of programs that offers more integration
18 than we've seen so far in any high-end office suite.

19 Correct, sir?

20 A. Again, you've read that correctly.

21 Q. And the other high-end office suites available
22 at that time would have been, for instance, Microsoft Office,
23 correct?

24 A. That was one of the other suites, yes.

25 MR. JOHNSON We can take that down, Mr. Goldberg.

1 THE WITNESS: You don't want me to look at the
2 document?

3 Q. BY MR. JOHNSON: Let's talk about middleware,
4 Mr. Gates.

5 A. Well, okay. It's too bad.

6 Q. Well, you do want to get out of here today, I think, so
7 I'm going to try to work through these topics as quickly as
8 we can.

9 A. But as we saw in the other document, if you don't let
10 me read the thing, you can leave a misleading impression, so,
11 okay.

12 Q. Well, if you think I'm leaving a misleading impression,
13 I'm sure that your counsel, on redirect, will straighten that
14 out.

15 A. Okay.

16 Q. Okay? So, if we can just focus on my questions, we'll
17 get through this quite a bit quicker, if you can, Mr. Gates.
18 I realize that may be difficult.

19 MR. HOLLEY: Your Honor, I object, to this
20 commentary. If he wants to ask the man question, he can, but
21 he is not supposed to be commenting on the witness' demeanor.
22 It's not fair. He keeps asking him things to refresh his
23 recollection before he even asks him the question.

24 MR. JOHNSON: Your Honor, I'm only trying to.

25 THE COURT: I don't want anymore commentary. I want

1 questions and answers. Let's get to it.

2 Q. BY MR. JOHNSON: Mr. Gates, you would agree that from
3 1995 to 1999, middleware was an important source of
4 competition to Windows?

5 A. Actually, in terms of being a practical end-user
6 solution, it, in no way, was a competitor. It was a
7 potential competitor that we thought about and that affected
8 our strategy, but, in fact, no middleware product ended up
9 getting enough applications to be a reasonable choice for
10 people in the marketplace.

11 Q. Mr. Gates, would you turn to Mr. Maritz's testimony in
12 the case against Microsoft in Washington, D.C., paragraph --

13 MR. HOLLEY: Your Honor, may we approach the bench?

14 THE COURT: Approach the bench.

15 (Discussion among the Court and counsel out of the hearing of
16 the jury.)

17 MR. HOLLEY: Novell sought and obtained collateral
18 estoppel on various findings of fact in the government case
19 which are binding and should not be relitigated. It is not
20 appropriate for Mr. Johnson, from this witness, to tell this
21 jury about what people said in the government case. If he
22 wants to read something to Mr. Gates and ask him whether he
23 agrees with it, that's one thing, but to basically use him as
24 a conduit for putting in evidence that turned out to be
25 rejected by Judge Jackson is not appropriate.

1 MR. JOHNSON: Your Honor, it's absolutely
2 appropriate. This testimony constitutes admissions by
3 Microsoft with respect.

4 THE COURT: You're contradicting your own findings
5 of fact.

6 MR. JOHNSON: We are not at all, Your Honor, not in
7 the least.

8 THE COURT: Well, why not?

9 MR. JOHNSON: Because the evidence that was
10 presented in the government's case with respect to
11 competition from middleware was not rejected in the
12 government case. What was found in the government case is
13 that Microsoft had acted anticompetitively with respect to
14 that middleware. The fact that middleware was -- provided
15 competition to Microsoft and constrained its behavior was, in
16 fact, the theory of the government case. And it was a
17 winning theory for the government in that case.

18 These admissions are in no way inconsistent with the
19 findings in the government case.

20 THE COURT: In any event, I don't -- you've got
21 Maritz's testimony, and, as far as I'm concerned, you
22 shouldn't use Mr. Gates as a contrary view. If you want to
23 ask if he agrees with Mr. Maritz, apparently there's no
24 objection to that.

25 MR. JOHNSON: Well, Your Honor --

1 THE COURT: But I'm definitely not going to allow
2 you to use everything said by other Microsoft witnesses and
3 just simply use him as a conduit. If he has a different
4 opinion that's for our members of the jury.

5 MR. JOHNSON: Your Honor, are you then granting our
6 motion to get Mr. Maritz's testimony in? I can shorten this
7 up considerably if you are, but if you aren't -- but if you
8 aren't, it's very important --

9 THE COURT: I thought this portion of Mr. Maritz's
10 testimony was in.

11 MR. JOHNSON: No. This is part of our motion to
12 reopen, which we have asked for Mr. Maritz's and Mr. Alepin's
13 testimony --

14 THE COURT: It's is not evidence. You can't read it
15 in.

16 MR. JOHNSON: I'm not reading it in. I'm using it
17 as an admission with respect to the cross examination.

18 THE COURT: I sustain the objection to this
19 question, and if you want to ask another question, we'll see
20 what it is.

21 MR. HOLLEY: Thank you, Your Honor.

22 (Proceedings continued in open court.)

23 Q. BY MR. JOHNSON: Mr. Gates, isn't it true that, over
24 time, a middleware provider can broaden the set of
25 functionality it provides to the point that the underlying

1 operating system is rendered unnecessary or could be swapped
2 out for another operating system?

3 A. That could happen. It -- I don't know of any case that
4 it did, but, yes, that is technically possible.

5 Q. And you would agree with me, would you not, sir, that
6 potential middleware puts competitive pressure on Microsoft
7 and thus constrains Microsoft's behavior?

8 A. Yeah. It would be all to the degree that that
9 middleware attracted applications, and in the case of, say,
10 productivity applications, it turned out that never
11 happened.

12 Q. And the same would be true for actual middleware,
13 correct, Mr. Gates? It, too, competes with Windows and
14 constrains Microsoft's behavior, correct?

15 A. To the degree that it attracts applications, yes. And,
16 in fact, no middleware did attract a large suite of
17 applications.

18 Q. And products that constituted middleware, that provided
19 significant competition to Windows, included Sun's Java,
20 Netscape Navigator, IBM's Lotus Notes, and Novell's AppWare,
21 correct?

22 A. Well, those all potentially could have attracted
23 applications. Actually not Notes, because it didn't have the
24 right capability. I'd have to think about them individually.
25 But some of those could have attracted applications if they

1 had gotten broad enough. In '99, none of them was broad
2 enough.

3 Q. And, Mr. Gates, let's talk about Java. Between 1996
4 and 1999, Microsoft faced serious competition from Sun's
5 middleware Java; isn't that correct, sir?

6 A. Yes. We had the prospect that they would expand the
7 Java Runtime to be able to run full-blown applications, and
8 we were concerned about that, so it was prospective
9 competition, but, in fact, they never expanded it to be able
10 to run full-blown applications.

11 Q. And, Mr. Gates, part of the reason why Java never
12 achieved its goal was because Microsoft was found to have
13 engaged in a series of anticompetitive actions, from 1996
14 through 1999, to prevent Java from becoming a threat to the
15 operating systems monopoly, correct, sir?

16 A. No. You've connected two things together. There
17 absolutely were findings about what Microsoft had done with
18 respect to Java, but, at no time was it found that that's
19 what caused them not to get a broad set of applications.

20 Q. Well, let's look at finding of fact 394 in this case.

21 Would you put that up.

22 Mr. Gates, finding of fact 394 states --

23 A. Can I see the whole thing, or is this the whole thing?

24 Q. That is finding of fact 394 in its entirety. Have you
25 got it there, sir?

1 A. Yeah.

2 Q. "In a further effort intended to increase the
3 incompatibility between Java applications written for its
4 Windows JVM -- that's the Java Virtual Machine -- and other
5 Windows JVM's and to increase the difficulty of porting Java
6 applications from the Windows environment to other platforms,
7 Microsoft designed its Java developer tools to encourage
8 developers to write their Java applications using certain key
9 words and compiler directives that could only be executed
10 properly by Microsoft's version of the Java Runtime
11 Environment for Windows. Microsoft encouraged developers to
12 use these extensions by shipping its developer tools with the
13 extensions enabled by default and by failing to warn
14 developers that their use would result in applications that
15 might not run properly with any Runtime Environment other
16 than Microsoft's and that it would be difficult and perhaps
17 impossible to port to JVM's running on other platforms. This
18 action comported with the suggestion that Microsoft's Thomas
19 Reardon made to his colleagues in November of 1996, quote,
20 'We should just quietly grow J++, Microsoft's developer tools
21 share and assume that people will take more advantage of our
22 classes without ever realizing they are building Win32-only
23 Java apps. Microsoft refused to alter its developer tools
24 until November, 1998, when a Court ordered it to disable its
25 keywords and compiler directives by default and to warn

1 developers that using Microsoft Java extensions would likely
2 cause incompatibilities with non-Microsoft Runtime
3 Environments."

4 Did I read that pretty well, Mr. Gates?

5 A. Yes, you do. It doesn't relate to the breadth of the
6 Java API and whether people could write horizontal
7 applications.

8 Q. Can you tell me, sir, who was Thomas Reardon?

9 A. Apparently he was an employee of Microsoft.

10 Q. You don't know who he is, sir?

11 A. No, sir.

12 Q. And can you explain to this jury, sir, why Microsoft
13 engaged in this bait-and-switch tactic with developers
14 developing to Java languages?

15 A. Okay. It has nothing to do with the breadth of the
16 Java applications, so we are on a completely different topic
17 here. We did give people a way of exploiting Windows' native
18 functionality.

19 Q. In fact, Microsoft's goal was to kill cross-platform
20 Java by growing the polluted Java market. Isn't that
21 correct, sir?

22 A. Those aren't words that I ever used, no.

23 Q. Do you recall, sir, that Thomas Reardon was a developer
24 for Internet Explorer?

25 A. No.

1 Q. Isn't it true, Mr. Gates, that Sun's Java was not the
2 only product back in the 1995/1996 time frame that threatened
3 to commoditize the Windows operating system?

4 A. There were many -- we were very good at -- as a
5 company, at looking at anything that might present future
6 competition, and so there were literally dozens of things
7 that we would write emails about, you know, show a lot of
8 concern about, think what we ought to do about. But, in
9 fact, whether it was in middleware or in direct competition,
10 actually none of those competitors created anything broad
11 enough or attracted enough ISV's so that they became serious
12 competitive threats.

13 Q. In fact, Mr. Gates, Microsoft also recognized that
14 Novell's AppWare constituted middleware that posed a platform
15 threat to Windows, correct, sir?

16 A. It had that prospect, but I'm not aware of any
17 application that was ever written to it.

18 Q. In 1994, Brad Silverberg was the senior vice-president
19 of Microsoft's personal systems division, correct?

20 A. Yes.

21 MR. JOHNSON: Can we put up Mr. Silverberg's slides,
22 please.

23 Q. Mr. Gates, Mr. Silverberg testified -- this is in 1994,
24 during the relevant period, Mr. Gates?

25 A. This is a terrible picture.

1 Q. Yes. It came from his deposition, sir.

2 A. The picture?

3 Q. Yes, sir.

4 A. Oh.

5 Q. "Question: What is your understanding of AppWare?

6 Answer: AppWare is an operating system. AppWare
7 contains all the functions of an operating system and is a
8 wonderful attempt by Novell to again reduce Windows or
9 anything underneath to it a commodity, so it could get
10 applications completely dependent on AppWare, have no
11 dependence on Microsoft or other pieces underneath it so they
12 could supply their own pieces underneath it and thus
13 eliminate, as Mr. Noorda has stated --"

14 A. "As stated."

15 Q. Yeah, I recognize "as stated." I'm sure he meant "has
16 stated" -- his goal as a Windows-free world."

17 Other than the "as," did I read that right,
18 Mr. Gates?

19 A. Yes, sir.

20 Q. And you would not agree -- disagree with
21 Mr. Silverberg's sworn testimony in the case against
22 Microsoft?

23 A. Yes. As I said, there were many, many things that had
24 the prospect of creating competition, but for something like
25 AppWare the question was, did they attract any applications

1 developers? Did they make it broad enough? Did they promote
2 it? Did it have some benefit? You know, did the resulting
3 applications, when they were used on various platforms, run
4 at a good speed, feel like they belonged on that platform.

5 And the fact is, I don't know a single application
6 that was ever written to AppWare. So, in terms of actual
7 competition; that is, in the sense of somebody really
8 considering using that versus Windows, that didn't happen.

9 Q. Mr. Gates, you have no reason to disagree with
10 Mr. Silverberg's sworn testimony that AppWare contained all
11 the functions of an operating system?

12 A. Well, actually, that goes a little too far. It
13 actually didn't contain all the functions of an operating
14 system.

15 Q. So, it's your testimony, then, that Mr. Silverberg was
16 not telling the truth in his testimony in 1994?

17 THE COURT: That's now what he's saying. He's
18 saying he's disagreeing, so let's not --

19 THE WITNESS: He made a mistake by saying all the
20 functions of an operating system. It didn't contain -- it
21 had to have a host operating system to sit on top of.

22 Q. Well, let's look at Mr. Paul Maritz's testimony. You
23 remember who Mr. Paul Maritz was, don't you?

24 A. Absolutely.

25 Q. He was the head of Microsoft's operating system

1 division, correct?

2 A. Well, the thing you just put up suggests his title was
3 product and technology strategy. As I said, his title
4 changed over time, but, basically, yes, he ran all the
5 operating systems.

6 Q. And Mr. Maritz testified about AppWare, that it is an
7 explicit attempt by Novell to develop a layer that will
8 provide all the services required by applications, correct,
9 sir?

10 A. That's correct. That -- that matches what I said. It
11 doesn't say that it's got all the functions of an operating
12 system.

13 Q. And you would agree that, in 1994, Microsoft believed
14 that it needed to take AppWarer seriously and make sure that
15 they understood it?

16 A. We took dozens and dozens of things seriously. We were
17 very good at having almost a sense of paranoia about what
18 might emerge and so the key thing to watch was, did anybody
19 write applications to these things, particularly broad, rich,
20 applications, and that did not happen.

21 Q. Let me show you what has been marked Plaintiff's
22 Exhibit 134. This is an email from Steven Sinofsky to you,
23 sir, dated February 22, 1994. Do you recognize this email?

24 A. I don't remember seeing it, but I'm -- it appears to be
25 an email I received, yes.

1 Q. And Mr. Sinofsky was reporting about AppWare being the
2 product of the week, correct?

3 A. Well, he forwarded a message from another person, Bob
4 Kruger, that talks about a PC Week article on AppWare.

5 Q. And Mr. Sinofsky was telling you that Microsoft needed
6 to take AppWare seriously, make sure we understand it, create
7 a comprehensive and cohesive competitive statement and
8 distribute appropriate info to combat the threat, correct,
9 sir?

10 A. Well, no. Mr. Sinofsky just forwarded Bob Kruger's
11 email.

12 Q. Isn't Mr. Sinofsky bringing this to your attention for
13 that reason?

14 A. No. The statements are from Bob Kruger, not
15 Mr. Sinofsky.

16 Q. I understand that, sir. Isn't Mr. Sinofsky bringing
17 this to your attention for that reason?

18 A. He forwarded the email.

19 Q. Apparently Microsoft had an AppWare task force, sir, is
20 that correct?

21 A. I'm not aware of that. It says -- this is copied to a
22 thing called Novell Competition and Issues, so apparently
23 there was an email alias of people who had interest in
24 various competitive things related to Novel.

25 Q. Yes, sir. Why is it marked private there, Novell

1 Competition and Issues?

2 A. That means that it's a group that only people inside
3 the company join that group. In other words, outside vendors
4 or contractors don't join that alias. It's an alias that's
5 been set up for internal company use.

6 Q. And it's an alias about competition with Novell,
7 correct?

8 A. Competition and issues with Novell, yes.

9 Q. You would agree with me that by the mid-1990's there
10 was also an explosive growth in internet popularity?

11 A. Absolutely.

12 Q. And you would agree with the fact that middleware, like
13 Netscape Navigator, which only exposed a limited set of
14 API's, also posed a threat to Windows?

15 A. No. As long as it had just that limited API set and
16 people weren't writing a broad set of applications to it, no
17 customer was going to pick it over Windows. There was the
18 prospect that they would expand the platform, make it fast
19 enough and make it good enough, but that never happened.

20 Q. Mr. Gates, isn't it true that, as early as May, 1995,
21 you understood that Netscape posed a threat to commoditize
22 the Windows operating system?

23 A. That's right. What Netscape said they were going to do
24 was broaden the API and make it highly performant and attract
25 people to write applications to that API, and, in fact, that

1 never happened, but we were quite concerned about it. We
2 took that -- we took that threat seriously.

3 Q. And you, in fact, wrote, in a May 26, 1995 memo,
4 entitled The Internet Tidal Wave, quote, "A new competitor
5 born on the internet is Netscape. Their browser is dominant,
6 with 70 percent usage share, allowing them to determine which
7 network extensions will catch on. They are pursuing a
8 multi-platform strategy where they move the key API into the
9 client to commoditize the underlying operating system."
10 Close quote.

11 You wrote that, did you not, sir?

12 A. Yeah. Actually, that memo I remember well enough I
13 don't even need you to show me a copy of it. We were
14 concerned that they broaden the API set and attract
15 applications. That didn't happen, but we had -- we had a
16 concern about that, yes.

17 Q. And you did consider Netscape's strategy at the time to
18 be a threat to commoditize Windows, correct?

19 A. If they had broadened the API and attracted
20 applications, that would create an alternative to Windows, so
21 we were concerned about it as a potential competitor, yes.

22 Q. And do you understand the term "commoditize" to refer
23 to the threat that competitors pose to either reduce the
24 value or eliminate demand for the Windows operating system?

25 A. Well, the term "commoditize" by itself simply means to

1 make less valuable because there's readily available
2 substitutes.

3 Q. Mr. Gates, do you recall being deposed in the case
4 against Microsoft in Washington, D.C. on September 2, 1998,
5 sir?

6 A. I was deposed, yes.

7 Q. And did I ask you the following question and answer?
8 If you could put that up?

9 A. Wait a minute, which deposition?

10 Q. Mr. Gates --

11 A. I'm sorry. Now I'm confused. Which deposition were
12 you asking about?

13 Q. I'm asking about your deposition on September 2, 1998,
14 taken in Redmond, Washington, in the case against Microsoft
15 in Washington, D.C.

16 A. And you said, "Did I ask you?" And --

17 THE COURT: Were you the --

18 MR. JOHNSON: No. I wasn't taking the deposition.

19 THE WITNESS: Right. So, when you say did I ask
20 you --

21 THE COURT: Wait just a second.

22 Q. BY MR. JOHNSON: Were you asked the following question
23 and did you give the following answer, Mr. Gates? And this
24 is page 599, Mr. Holley, lines 11 through 19:

25 "Question: When people used the word with you

1 'commoditize' as in the statement that Netscape was
2 threatening or endeavoring to commoditize the operating
3 system, what do you understand commoditize to mean?

4 Answer: That they were creating a product that
5 would either reduce the value or eliminate demand for the
6 Windows operating system if they continued to improve it and
7 we didn't keep improving our product."

8 Close quote.

9 Does that refresh your recollection that you
10 understand the word "commoditize" to mean a product that
11 would either reduce the value or eliminate demand for
12 Windows?

13 A. Well, I think it's kind of silly and strange. I don't
14 understand the word "commoditize," by itself to mean that,
15 but whoever asked that question actually did a good job. The
16 question is a good question. The answer is a good answer,
17 but it's still not saying that the word "commoditize," by
18 itself, has any direct relationship to Windows. Your
19 question was more broad. This question is a well-phrased
20 question.

21 Q. Mr. Gates, you would agree with me that Microsoft knew,
22 in 1995, that Novell had begun -- began to add internet
23 capabilities to their products, correct?

24 A. That sounds correct, yes.

25 Q. And you were aware that in February of 1995, Novell had

1 entered into a distribution agreement with Netscape to
2 integrate Netscape's Navigator into Novell's productivity
3 applications?

4 A. Yeah. I don't know the exact time frame, but, yeah,
5 there was an agreement between them at some point in time.
6 In fact, there was this very complicated thing where they
7 created this joint venture. It was one of the most
8 dysfunctional business relationships of all time.

9 MR. JOHNSON: I move to strike, Your Honor.

10 THE COURT: Yes. And the motion is denied.

11 Q. BY MR. JOHNSON: You would agree with me, then, in
12 1995, PerfectOffice was one of the few big things that you
13 generally worried about?

14 A. I think I worried about a lot of things, so I -- I -- I
15 will disagree that there's any few things that I worried
16 about in 1995.

17 Q. Let me show you now what has been marked Plaintiff's
18 Exhibit 302. This is an email you wrote in May of 1995,
19 correct, sir?

20 A. Let me read it. Just a sec. Yeah. Okay. Yes. It's
21 an email from me to Steve Ballmer.

22 Q. And during this time period in 1995, you stated to
23 Mr. Ballmer that you generally only try to worry about a few
24 big things, which you identify here as Novell's
25 PerfectOffice, Lotus Notes, and SmartSuite. Correct, sir?

1 A. No. You -- in that case, you failed to read it
2 correctly. Why don't you try again.

3 Q. Why don't you answer the question, Mr. Gates?

4 A. Okay.

5 Q. Isn't it true, sir --

6 A. First of all --

7 Q. -- that during the time period in 1995, you told
8 Mr. Ballmer you generally try and worry only about a few big
9 things we all know about, Novell PerfectOffice, Lotus Notes
10 and SmartSuite, correct, sir?

11 A. You did not correctly read the sentence. So, do you
12 want me to read the sentence?

13 Q. I'd just like an answer to my question, Mr. Gates.

14 A. Okay. First of all, there's a difference between what
15 you try and worry about and what you worry about. You try
16 and worry about less, but when you're saying you are
17 generally trying to worry about less, you worry about more.
18 The other thing is, you skipped the part where it says things
19 I have special expertise on. And that has lawsuits, patents,
20 technology and internet. So, by skipping that, you narrowed
21 the list of things that I -- that are the things that I
22 generally try and only worry about, as opposed to the set of
23 things I actually did worry about.

24 Q. Well, I certainly didn't mean to leave out lawsuits,
25 patents, technology and the internet, Mr. Gates.

1 A. Okay, but you --

2 Q. But you would agree with me that, included within the
3 few big things that you generally try to worry about in 1995
4 were Novell PerfectOffice, Lotus Notes and SmartSuite?

5 A. No. This is trying to limit the things I worry about.
6 They are not things -- anyway, yes, they are -- this is on
7 the list of things that I worried about.

8 Q. I think the jury knows what PerfectOffice and Lotus
9 Notes is. SmartSuite was Lotus' suite of office productivity
10 applications, right?

11 A. That's correct.

12 Q. Now, you also told Mr. Ballmer that you had special
13 expertise in lawsuits, correct?

14 A. Relative to him, yes.

15 Q. Oh. Are you only talking relative to him, sir?

16 A. Yes, sir.

17 Q. In this email?

18 A. Yes, sir. We were the two top executives of the
19 company, and there was a question, when lawsuit things came
20 up, for most things, I would spend more time on it than Steve
21 would.

22 Q. And you would spend a lot more time with Microsoft's
23 lawyers than Steve would, correct?

24 A. In general, yes.

25 Q. And certainly, you've had your deposition taken in

1 various antitrust suits against Microsoft?

2 A. I think two.

3 Q. Including various Federal Trade Commission and
4 Department of Justice investigations?

5 A. No. The federal -- I don't know why you refer to the
6 Federal Trade Commission. I don't think so.

7 Q. It's true, sir, that Novell sold its office
8 productivity applications to Corel in May of 1996, correct?

9 A. That sounds like the correct date. They were sold,
10 yes.

11 Q. And you would agree with me that, in 1996, Corel also
12 shipped a lot of units of Netscape, correct?

13 A. A lot is a pretty vague term, and I actually don't know
14 how many they shipped. So, they shipped some, yes.

15 Q. Let me show you what has been marked Plaintiff's
16 Exhibit 578.

17 Don't put that up, Mr. Goldberg.

18 MR. HOLLEY: We object to the admission of PX-578
19 because it's outside the relevant time frame of this lawsuit.

20 THE COURT: Overruled.

21 (Plaintiff's Exhibit 578 received in evidence.)

22 MR. JOHNSON: Thank you, Your Honor.

23 THE COURT: You don't have to thank me for any
24 rulings. You don't have to comment about any rulings. I
25 just make them.

1 MR. JOHNSON: I need to be polite, Your Honor.

2 THE COURT: I appreciate that.

3 Q. BY MR. JOHNSON: Mr. Gates, Plaintiff's Exhibit 578 is
4 now on the screen, and the jury is seeing it. The bottom
5 email is an email from you, correct?

6 A. Yes.

7 Q. And you were asking Mr. Amar Naru -- is that correct?
8 Is that how you pronounce his name?

9 A. I don't remember.

10 Q. You're asking him about what kind of data do we have
11 about how much software companies are paying Netscape,
12 correct?

13 A. That's right.

14 Q. And you go onto say, "In particular, I am curious about
15 their deals with Corel, Lotus and Intuit. All of these ship
16 a lot of units of Netscape," correct?

17 A. That's what I said, yes, sir.

18 Q. So, you said, in this email, that all of these, Corel,
19 Lotus and Intuit, were shipping lots of units of Netscape,
20 correct, sir?

21 A. I did.

22 Q. And you were inquiring here about Netscape's deals with
23 these companies and how much they were getting paid to
24 distribute Netscape, right?

25 A. Yeah. I was asking that question.

1 Q. Mr. Gates, I'd like to go back to some of your
2 testimony early on in your direct, when you were talking
3 about Windows 3.0, the 1990 version of Windows. Do you
4 recall that testimony?

5 A. I spoke about it, yes.

6 Q. And you testified that, quote, "Everyone knew that we
7 were out talking to everyone, trying to encourage them to do
8 Windows applications." Close quote. Do you recall that
9 testimony, sir?

10 A. Yes, sir.

11 Q. And it's your testimony that ISV's knew that Microsoft
12 wanted them to write for Windows 3.0, right?

13 A. That we wanted them to write graphical applications in
14 general, yes. We were promoting -- we have been promoting
15 graphical interface going back to Windows 1.0. It wasn't
16 specific to a particular version, but, yes, we promoted
17 Windows graphics interface.

18 Q. Isn't it a fact, sir, that Microsoft and IBM had a
19 development partnership in the late 1980's?

20 A. Yes.

21 Q. And isn't it a fact, sir, that Microsoft and IBM issued
22 a joint statement of direction in November of 1989?

23 A. I wasn't sure what year it was, but, yes, we -- we
24 talked about the need for people to move away from DOS
25 applications and write graphical applications.

1 Q. I hand you now what's been marked Plaintiff's Exhibit
2 Number 4. Do you recognize this, sir, as the joint statement
3 of direction issued by Microsoft and IBM in November of 1989?

4 A. Well, I don't see the statement of direction
5 terminology that you're using. Do you see that somewhere?

6 Q. Yes. Second paragraph, sir.

7 A. Oh, yes. You're right.

8 Q. It says this statement of direction?

9 A. Absolutely. You're correct. Yeah. This looks like
10 the -- the joint press release that was done at that time.

11 Q. And Microsoft and IBM told the public that, beginning
12 in the second half of 1990, IBM and Microsoft planned to make
13 the graphical applications available first on OS/2. Correct,
14 sir?

15 A. Yeah. We had already shipped all our applications on
16 Windows by this time, so we had nothing additional that would
17 have been first.

18 Q. Was that a yes to my question, sir?

19 A. I elaborated on it, but, yes, that is the statement in
20 here, but we had no major applications that hadn't been
21 shipped on Windows at this time.

22 Q. And if you will turn to the fourth page of this
23 statement of direction, with a Bates stamp at the bottom IBM
24 982, in the third paragraph, Microsoft and IBM told software
25 developers, other than those with current Windows products

1 underway who were targetting both environments are
2 recommended to start with OS/2. Isn't that correct, sir?

3 A. Yeah. But, by this time, most people had Windows
4 projects underway. Also it talks -- I mean, you're
5 snippeting this thing. Most of the hardware at the time
6 could not run OS/2, and it talks in here about the fact that,
7 yes, we admit that OS/2 requires these big hefty machines and
8 so, in fact, if you want to target those customers that don't
9 have those machines, you're going to have to do Windows
10 development.

11 Q. Mr. Gates, I'm going to show you what has been marked
12 PX-6-A, and you can ignore those little red flags on that
13 exhibit.

14 A. What is this? There's no title page here.

15 Q. You see, down at the bottom of the first page, there's
16 an email from Mr. Cameron Myhrvold to John Lazarus and Nathan
17 Myhrvold? Do you see that, sir?

18 A. Actually, it's to Peter Nuffer.

19 Q. Yeah, but with a CC to John Lazarus and Nathan
20 Myhrvold, right?

21 A. Yeah, but --

22 Q. Isn't it true, Mr. Gates, that Microsoft told ISV's to
23 develop for OS/2 and put lot more emphasis on writing OS/2
24 apps than Windows applications?

25 A. There was a -- a very complex set of things going on

1 because IBM OS/2, the so-called presentation manager piece of
2 that, had been delayed, and OS/2 required a lot of extra
3 hardware. And so the question of, what was IBM saying to
4 people? What was Microsoft saying to people? There was
5 immensely complicated discussions about that, and, in
6 general, people wrote for Windows, and, you know, just like
7 Microsoft did. We came out with applications for Windows.
8 We also came out with applications for OS/2. So there's
9 some -- this appears to be -- is this a long email thread?

10 Q. Mr. Gates, yesterday you testified you couldn't
11 remember what position -- you couldn't even remember Cameron
12 Myhrvold, is that correct, other than you knew he was
13 Nathan's brother?

14 A. That's not correct. I said I remembered Cameron
15 Myhrvold. I said I didn't know what position he had.

16 Q. Well, you do recall that Microsoft had a group called
17 the Developer Relations Group, right?

18 A. Yeah. Are you telling me he was a part of that?

19 Q. Actually, he created the DRG.

20 A. That's certainly not the case. The DRG certainly
21 existed before Cameron Myhrvold came to work at Microsoft.

22 Q. Do you recall that he ultimately became the
23 vice-president of the internet customer unit at Microsoft?

24 A. No. I know what his brother did.

25 Q. Now, Mr. Myhrvold -- and I mean Cameron -- copied

1 Nathan Myhrvold on this email. Can you tell the jury what
2 position Nathan Myhrvold held with Microsoft in 1989?

3 A. Why are you asking me about 1989? I don't -- he had
4 some development position. We hadn't created Microsoft
5 research yet, so he wasn't over there. In 1991, he went over
6 on research. He was somewhere in the systems division -- I
7 think it was called the advanced development group -- in
8 1989.

9 Q. And, ultimately, he became Microsoft's chief technology
10 officer, correct?

11 A. Yeah. He eventually got a -- some fancy title like
12 that. He was also the head of Microsoft research.

13 Q. Isn't it true, Mr. Gates, that major ISV's, including
14 Lotus, Borland and WordPerfect, were late to Windows because
15 they focused on OS/2, like Microsoft told them to do?

16 A. No. ISV's had a choice of which operating system they
17 wrote to. They were very clear about what we were doing,
18 which is we actually not only shipped first on Windows, we
19 were also the first to ship on OS/2, so our ability to
20 execute and do graphical applications; whether it was Mac,
21 where we were by far the first and the most popular
22 applications; Windows, where we were the first and had the
23 most popular applications; and, amazingly, OS/2, even though
24 eventually, in a very complex series of steps it turned into
25 a competitor, we were actually the first and the most popular

1 graphical applications on OS/2 as well.

2 So, in all three of those graphical environments, we
3 shipped applications, we were the first, and we did the best
4 job.

5 Q. Mr. Gates, I'd like to direct your attention to the
6 page Bates stamped at the bottom ending 118, and specifically
7 to paragraph 5 at the bottom of the page.

8 Can we bring that up, Mr. Goldberg?

9 Mr. Cameron Myhrvold writes, "Can we back off OS/2 as a
10 successor to DOS? How do we beat a successful retreat path?
11 How much of the industry do we alienate? I will just assume
12 that OEM's and IBM are irrelevant, that they are so jaded, it
13 doesn't matter what we do. What about large corporations who
14 have bought our story? What about ISV's who have invested in
15 OS/2? What will the press say? I don't buy that we can hide
16 behind this insipid claim that we've always pushed Windows
17 and it's their own fault. It just isn't true. We have told
18 ISV's to develop for OS/2 and clearly put a lot more behind
19 getting OS/2 apps than Windows apps. ISV's will be burned,
20 and they are not an infinite or renewable resource. They
21 will remember misdirection and bad advice, and they will
22 blame Microsoft for all their ills. They will also be
23 jealous because we will make out like bandits. Believe me,
24 companies like Describe will die. The press will have a
25 field day, and Manzi and Gibbons and Kahn will fan the flames

1 for all they're worth."

2 Does that refresh your recollection, sir?

3 A. About what?

4 Q. Than major ISV's, including Lotus, Borland and
5 WordPerfect were late to Windows because they focused on OS/2
6 because that's what Microsoft told them to do?

7 A. No. That in no way would explain why we were able to
8 ship on Mac first, OS/2 first and Windows first. If there
9 was some finite notion that you could only develop for one
10 platform, then they would have been at least first on some
11 platform, some platform some time. But, in fact, the key
12 question was their commitment to graphics interface in
13 general.

14 Q. And, in fact, Mr. Gates, Microsoft did make out like
15 bandits, didn't they, sir?

16 A. I wouldn't say bandits. People did buy our software.

17 Q. Well, isn't it a fact that Microsoft was able to
18 release the first word processor on Windows?

19 A. We released the first word processor on Windows, Mac
20 and OS/2. On OS/2, we beat people by even more than we did
21 on Windows.

22 Q. I'm speaking particularly about Windows now, Mr. Gates.
23 Isn't it a fact that Microsoft was able to release the first
24 word processor on Windows?

25 A. No. Actually there was a very obscure company that

1 shipped before us, but of the major providers, yes, we
2 shipped first.

3 Q. And Microsoft held that position for at least a year,
4 correct?

5 A. I don't -- I don't know the exact timing of how long it
6 was. It was a longer time delay between our shipping and
7 other people's shipping on Mac and OS/2 than it was on
8 Windows.

9 Q. And that was a once-in-a-lifetime opportunity, wasn't
10 it, Mr. Gates?

11 A. Developing Windows 95, making it a great product, doing
12 great applications for it, yes, that was a once-in-a-lifetime
13 opportunity.

14 Q. No, Mr. Gates. I'm talking about what we are talking
15 about now.

16 A. What are you talking about?

17 Q. Windows and the word processor which you put on Windows
18 3.0, and you were the only people in the market because you
19 told all the other ISV's to develop to OS/2. Isn't that a
20 fact, sir?

21 A. No. No. We shipped Windows. Let's get the facts
22 straight. We promoted graphical interface starting in 1985.
23 And the key thing for a company -- the difference between
24 being on different graphical environments is much smaller
25 than the need to do graphical applications in general. And

1 so, once you had done a version for OS/2, moving it to
2 Windows wasn't that hard. Doing it for Windows, moving it to
3 OS/2 wasn't that hard. In fact, that was the easiest move
4 back of all.

5 The key thing was whether what Microsoft told the
6 whole world they were betting the company on in 1985,
7 graphics interface, whether you got your engineering team
8 behind that and believed that was going to be an important
9 thing in the software market.

10 Q. Mr. Gates, it's a fact that Microsoft was telling ISV's
11 to write to OS/2 first, correct, sir?

12 MR. HOLLEY: Your Honor, I'll object. Asked and
13 answered three times. He's badgering the witness.

14 THE COURT: Sustained. That's not what he
15 testified.

16 Q. BY MR. JOHNSON: Mr. Gates, I'm going to show you now
17 what has been marked Plaintiff's Exhibit Number 7. This is a
18 Microsoft memorandum dated April 30, 1990, and you're copied
19 on it, correct?

20 A. Yeah. It looks like it's a memo from Scott Oki. Let
21 me take a quick look at it. Yeah. This is the sales --
22 sales guy.

23 Q. I'd like to point your attention to the first paragraph
24 on the second page. It states. "Fiscal year '91 is the year
25 of the GUI. Not just any GUI. The real strategic

1 opportunity is market preemption of the Windows platform in
2 terms of both creating sockets as well as taking possession
3 of those sockets with our Windows applications. This is the
4 single largest opportunity for the company to exploit in
5 fiscal year '91. Timing is critical. Currently the
6 categories absent are traditional competitors in the key
7 product market segments. This will not be the situation for
8 long. Lotus, WordPerfect, Aldus, Ashton Tate, et al., will
9 all have Windows based applications available within the next
10 year. It is a key strategic imperative to coalesce around
11 and marshal our sales and marketing resources to fully
12 exploit this once-in-a-lifetime opportunity."

13 Mr. Gates, does that refresh your recollection that
14 keeping ISV's off of Windows and developing for OS/2 allowed
15 you to exploit this once-in-a-lifetime opportunity?

16 A. This doesn't have anything to -- says nothing about
17 OS/2, not a thing. Can you find OS/2 in this memo?

18 Q. Let's ask this, Mr. Gates -- was OS/2 -- did it have a
19 GUI interface?

20 A. Not at first. That is a very complicated question to
21 answer because the presentation manager piece, which was the
22 GUI piece of OS/2, we had relied on IBM to do most of that
23 development, so we wrote the base portion of OS/2. OS/2, for
24 awhile, was a joint thing of Microsoft and IBM and then
25 eventually IBM kicks us out and does it themselves. And one

1 of the most troubled pieces was what was called the
2 presentation manager. So we actually ended up shipping that
3 operating system as a character mode operating system, not as
4 a graphical operating system.

5 Then this gigantic module presentation manager came
6 in in a later version.

7 MR. HOLLEY: Your Honor, could we approach the
8 bench, please?

9 THE COURT: Yes.

10 (Discussion among the Court and counsel outside of the
11 hearing of the jury.)

12 MR. HOLLEY: Your Honor, I have not objected on 403
13 grounds to what is known as the hid fake theory, circa 1989
14 and 1990, but the notion that we are taking an hour talking
15 about what happened in 1989 and 1990, years before Novell
16 bought these applications, leads me to conclude that the
17 filibuster is going on to try to make sure that Mr. Gates is
18 stuck here, and it's not appropriate.

19 There is no claim in this case that Microsoft
20 mislead Novell about whether to write to Windows. So, why
21 are we taking all of this time? I renew our 403 objection.
22 I was trying not to interfere, but now I must.

23 MR. JOHNSON: Your Honor, we had actually hoped to
24 avoid this issue in this case, but, unfortunately, on direct,
25 Mr. Gates testified at length that they were begging and

1 encouraging ISV's to write to Windows for the first Windows,
2 Windows 3.0, in 1990. It just isn't true, and the fact of
3 the matter is, the reason that Lotus and WordPerfect and
4 these other companies were all late to Windows initially,
5 which has been a big theme in the case, all along, that we
6 were late to Windows, was because we somehow didn't want to
7 get on the Windows band wagon and, you know, we weren't
8 prepared to take that step, etc., etc.

9 This evidence goes directly to the point that the
10 real reason that we were late and that people were late --
11 other ISV's were late at the time was due to Microsoft's --
12 if you'll excuse the expression, another bait and switch. I
13 didn't want to get into this but he opened the door.

14 THE COURT: I doubt it very seriously that you
15 didn't want to get into this. I think this has gone far
16 enough. I mean, it's not -- it's a part of their case. It's
17 not a big part of their case. All this really goes to, as I
18 now understand, the bait and switch, to the extent that it
19 affects the market, it was because Windows took advantage of
20 it to write its applications, so there's a 403 issue. Isn't
21 that right?

22 MR. JOHNSON: No, Your Honor. They took advantage
23 of it. Behind the scenes, they had all their developers
24 working on Windows the operating system while simultaneously
25 telling ISV's, write to OS/2, write to OS/2. And, in fact,

1 we have already had testimony from Mr. Cameron Myhrvold. It
2 was by video. And he testified that, in 1988 and late 1989,
3 during this period, he was out evangelizing OS/2, begging
4 ISV's to write to OS/2.

5 THE COURT: But as I understand it, at least the
6 prior memo and email, the once-in-a-lifetime opportunity
7 mostly related to the application side of the business.

8 MR. JOHNSON: Not the all, Your Honor. It related
9 to both Windows and the applications.

10 THE COURT: But vis-a-vis the competitors.

11 MR. JOHNSON: They were the only game in town.

12 MR. HOLLEY: Your Honor, this is a fantasy, and on
13 redirect he is going to regret this, but that's fine. When
14 Mr. Peterson comes to testify about why they didn't write for
15 Windows, this is going to be shown to be a tissue of lies.
16 But, in any event --

17 THE COURT: Because they never went to GUI?

18 MR. HOLLEY: They did not want to write for Windows
19 because Mr. Peterson did not want to help Microsoft and hated
20 Mr. Gates. That is what the evidence will show, but this is
21 a detour and a waste of time.

22 THE COURT: In any event, I think we've gone far
23 enough. Sustained.

24 MR. HOLLEY: Thank you.

25 (Proceedings continued in open court.)

1 Q. BY MR. JOHNSON: Mr. Gates, you would agree that you
2 and other senior executives viewed the applications market as
3 another source of competition that had the potential to
4 commoditize Windows?

5 A. The applications market?

6 Q. Yes, sir.

7 A. You're saying a market? No, I don't get what you're
8 saying.

9 Q. I'd like to show you what has been marked Plaintiff's
10 Exhibit 47. And you'll see on the first page an email from
11 Mr. Maritz with a copy to you and a large number of other
12 people. Do you see that, sir?

13 A. Yeah. I'm just looking at it.

14 Q. And we've already established that Mr. Maritz ran the
15 systems division in Microsoft during this time period, right?

16 A. Yep.

17 Q. And I think you testified on direct that, during the
18 1990's, you held many executive retreats at your personal
19 residence, right?

20 A. Yeah. That's not what this is, but --

21 Q. And your home was called the Gateway on Hood Canal, as
22 reflected in Mr. Maritz's email at the top of the page,
23 right?

24 A. That's what the facility was called, yes.

25 Q. I'm sorry. I thought you said on direct it was your

1 home?

2 A. Well, it's a piece of property called Gateaway. I have
3 a home on that property. The retreat was held in the
4 facility.

5 Q. You recall that Mr. Maritz discussed with you that the
6 purpose of the retreat held at your home -- or at the
7 facility, excuse me -- on June 10 through 12, 1993, was to
8 focus on how Microsoft could get systems and apps tools to
9 leverage each other's products more fundamentally from a
10 functionality and features point of view.

11 A. Yeah. Looking at the agenda, it's got Cairo, a lot of
12 Cairo discussion, Cairo in the -- Cairo database stuff.

13 Q. Let's take a look at the second page of this exhibit,
14 which is another email from Paul Maritz to certain Microsoft
15 employees who had been nominated to attend this retreat. Do
16 you see that, sir?

17 A. Yes. I'm not copied on this.

18 Q. I know, sir, but Mr. Maritz says, "With the approval of
19 Bill G -- " That would be you, right, sir?

20 A. Yes, sir.

21 Q. Mike Map, which is Mike Maples?

22 A. Yep.

23 Q. Pete H, which is Pete Higgins, and Roger H. Who was
24 Roger H?

25 A. Roger Heinen.

1 Q. "We have decided to use this year's systems retreat to
2 focus on ways that Microsoft's underlying platform, OS's and
3 DB's." You would agree with me, sir, that means operating
4 systems and databases?

5 A. Yes, sir.

6 Q. "And our applications products can better leverage each
7 other." Correct?

8 A. Yeah.

9 Q. So, it would be fair to say that you approved this as
10 the purpose of the retreat?

11 A. No. I think that's -- remember, I wasn't copied on
12 this email, so saying I put that as a purpose -- I think it's
13 easier to understand the retreat by just looking at the
14 agenda, and it's essentially about Cairo. It talks about
15 Chicago as the next release, but then two Cairo developments
16 discussions and then Roger did the underlying technology
17 under Cairo, which is what was going on with the database.

18 Q. The last sentence of Mr. Maples' email that we're
19 looking at right now states that, quote, "This is a crucial
20 issue for both systems and apps if we are both to avoid
21 commoditization." Do you see that, sir?

22 A. I see an email from Paul Maritz. I don't see an email
23 from Mike Maples.

24 Q. I'm sorry. You're right. You're right, sir. Let
25 me -- let me rephrase the question. The last sentence of

1 Mr. Maritz's email states that this is a crucial issue for
2 both systems and apps if we are both to avoid
3 commoditization, correct?

4 A. That's an email.

5 Q. Isn't it true, Mr. Gates, that you recognized many
6 years ago that Microsoft's strength in applications was
7 extremely helpful to Microsoft -- Microsoft's system
8 strength?

9 A. Yes.

10 Q. I'd like to hand you now Plaintiff's Exhibit 51, which
11 we actually saw during your direct examination. And you
12 acknowledged, during that direct examination, that this was
13 one of the group that did a presentation at the retreat held
14 at Hood Canal in June of 1993, correct?

15 A. Yeah. I didn't actually recall the retreat or any
16 particular presentation from the retreat. When you showed me
17 this document during the deposition, I said, yes, it looked
18 like the kind of document that could have been done on an
19 executive retreat.

20 Q. Yesterday Mr. Holley asked you if any of the team
21 members identified on this first page, which include Mike
22 Maples, John Lazarus, Tandy Trower, Steve Madigan, David
23 Cole, Chris Graham, Ed Fries and Nathan Myhrvold were
24 responsible for Windows 95, the overall Windows 95 product.
25 And your answer was unequivocally no. Do you recall that,

1 sir?

2 A. Yeah.

3 Q. Now, Mr. Gates, I'd like to show you a small section of
4 the testimony of David Cole, one of the folks identified
5 here in this group, and ask if you would take a look at that.
6 I'll actually read it to you, the testimony of David Cole:

7 "Question: And what was your involvement?

8 Answer: I was the -- one of the general managers
9 for Windows 95.

10 Question: Okay. When did you become the general
11 manager or one of the general managers for Windows 95?

12 Answer: It would have been about the middle of
13 1992, I believe.

14 Question: And to whom did you report?

15 Answer: I reported to Brad Silverberg.

16 And were there other managers?

17 Yeah, there was. Another general manager was John
18 Ludwig."

19 Does that refresh your recollection at all, sir,
20 that Mr. Cole were both -- was a general manager for the
21 Windows 95 product?

22 A. Yeah. I thought the question I was being asked was,
23 were any of these people in charge of Windows 95? And Brad
24 Silverberg was in charge of Windows 95. David Cole
25 definitely was part of the team.

1 Q. Okay, sir. So you didn't mean to give the impression
2 to the jury that there was nobody involved with Windows 95 in
3 this Group 1 discussion?

4 A. Well, we were all involved to some degree.

5 Q. And I think Mr. Holley actually made a mistake, and I'm
6 sure, certainly, it's innocent. But John L is John Lazarus,
7 not John Ludwig, right?

8 A. I'm not sure.

9 Q. Isn't John Ludwig -- isn't his alias John Lu?

10 A. I have to check. The way email names get shortened,
11 unfortunately sometimes you end up with ambiguity.

12 Q. Now Mr. Maples here, he was the executive
13 vice-president, worldwide products group, correct?

14 A. Have we established a date that we're talking about?

15 Q. Yes, sir. You established it yesterday in your
16 testimony. This was the presentation made at the Hood Canal
17 retreat?

18 A. No. Remember, I don't -- I don't recall the specific
19 presentation, so all I -- all I can say is that it looks like
20 the kind of documents that were done at those retreats. If
21 there's a date, it must come from the document, not from me.
22 So, what is the date?

23 Q. Mr. Gates, John Lazarus, assuming I'm right that John L
24 is John Lazarus, he would have been the vice-president in
25 charge of systems strategy, correct?

1 A. He did marketing functions, so I'm surprised that that
2 was his title, but it's possible he was. He was not involved
3 in any engineering.

4 Q. And Tandy Trower, he was the director of the user
5 interface architecture design. Correct, sir?

6 A. Yeah. I think he worked in the applications group
7 at that time, but he had -- he was broadly involved in what
8 we were doing with common user interface elements across
9 different products.

10 Q. Including the user interface for Windows 95, correct?

11 A. Yeah. He had -- he had some influence on that as well.
12 He did some very good work.

13 Q. And Chris Graham was the Microsoft office product
14 manager, correct?

15 A. I don't remember his title. We will have to look that
16 up.

17 Q. Well, you certainly know he that he was involved with
18 matters relating to Office?

19 A. Actually, I don't.

20 Q. Isn't it fair to say, sir, that when you viewed this
21 list of people at your deposition, you agreed with me that it
22 included both systems and applications executives, right?

23 A. That's correct.

24 Q. Now, since you profess to have some expertise with
25 lawsuits, can you tell me why this document is marked at the

1 bottom, client/attorney privilege material?

2 A. Well, first of all, I don't -- only relative to Steve
3 Ballmer do I claim to have any greater experience on
4 lawsuits, so, no. In terms of -- I will tell you, the way
5 these documents get all these markings on them, I find it
6 confusing and mysterious. I mean, there's just mark after
7 mark after mark and number after number. You know, somebody
8 who is more full time in lawsuits is going to have to testify
9 on that.

10 Q. Mr. Gates, you're not suggesting that the note,
11 client/attorney privilege material, is something that was
12 added to this document, are you, sir?

13 A. Are you saying it's not? I thought it was.

14 Q. Well, certainly, you've seen documents with the label
15 attorney/client privilege, right?

16 A. Yeah. I've seen it where it was done in the original
17 document and added afterwards.

18 Q. And you know what that means, don't you, sir, when a
19 document is labeled attorney/client privilege?

20 A. I have a general understanding. I don't understand the
21 legal issues as well as a lawyer would.

22 Q. Well, you understand enough to know that if a document
23 is labeled attorney/client privilege material, it is a
24 document that is privileged from discovery in a lawsuit,
25 correct?

1 A. No. Not necessarily.

2 Q. All right, Mr. Gates, certainly we can agree, can we
3 not, that none of these gentlemen here are attorneys?

4 MR. HOLLEY: Your Honor, I object to this line of
5 inquiry. I can't understand how you can ask a witness, who
6 is not a lawyer, about these sort of things.

7 THE COURT: This was the only question that was
8 appropriate to begin with, so I'll allow this one, but I
9 agree with you in principle. To your knowledge, were any of
10 these people lawyers?

11 THE WITNESS: No, sir.

12 Q. BY MR. JOHNSON: Let's turn to the page with the Bates
13 number ending 292, labeled The Radical Extreme, The Office
14 Shell. And looking at the first bullet point, sir, Basic
15 Approach, it states, "Hold extensible shell for Office."
16 Now, Office, with a capital "O" refers to Microsoft's suite
17 of office productivity applications, correct?

18 A. Most likely. As I said, I don't remember seeing this
19 document, but I think that's what they were referring to.

20 Q. Then it states, "Differentiation feature. Shell
21 integration. Wow."

22 So, a differentiation feature would be something
23 that would be different from what other competing suites
24 could offer, correct?

25 A. Well, you read it correctly. I'm not sure -- I'm not

1 sure what they are referring to, like, "Wow"? What does that
2 mean, "Wow"? You had to be there, I think.

3 Q. So the next bullet point in the Basic Approach states
4 that Chicago shell is non-extensible. Now, Chicago was the
5 code name for Windows 95, correct?

6 A. Right. And, in fact, as we know, it was quite an
7 extensible shell, so this is certainly referring to something
8 that never happened.

9 Q. And the next bullet point states, quote, "We couldn't
10 get it done in time, dot dot dot," close quote. Was that the
11 excuse to be used by Microsoft in explaining why the Chicago
12 shell would be non-extensible?

13 A. Well, first of all, the Chicago shell was extensible,
14 and guessing what these people meant from this, yeah, I think
15 your guess is as good as mine.

16 Q. Isn't it a fact, sir, that you agreed to the plan to
17 ship the extensible shell in Office?

18 A. Absolutely not. We never shipped any shell in Office,
19 so, that did not happen.

20 Q. I did not ask you -- the question to you, sir, was not
21 whether you shipped an extensible shell in Office. The
22 question to you, sir, was, you agreed to the plan to ship the
23 extensible shell in Office. Isn't that correct, sir?

24 A. Well, I don't know what plan you're referring to. The
25 thing that's -- that's on this slide absolutely did not

1 happen.

2 Q. Again, Mr. Gates, that wasn't the question. I didn't
3 ask you if it happened. I didn't ask you if it shipped.

4 A. I --

5 Q. I'm asking, sir, during this time period, right around
6 the retreat, in June of 1993, isn't it a fact that you agreed
7 to the plan to ship the extensible shell in Office?

8 A. We never -- what's on this slide, where it says Chicago
9 shell is non-extensible, that never happened. Nobody -- I
10 never -- nobody ever did anything that would have made that
11 shell non-extensible. It was extensible. It stayed
12 extensible.

13 So, you know, this -- that -- the Chicago shell
14 shipped as an extensible shell.

15 Q. Mr. Gates, respectfully, could you please answer my
16 question?

17 A. There was no plan that I ever agreed with to make the
18 Chicago shell non-extensible.

19 Q. Let me show you what's been marked Plaintiff's Exhibit
20 52. This is an email from Dennis Adler to Brad Silverberg,
21 David Cole, and there we go. There's a John Ludwig, John Lu.
22 You see that there at the top of the page?

23 A. Yep.

24 Q. So you would agree with me that John Lu would be John
25 Ludwig, right?

1 THE COURT: I think John is also spelled
2 differently, but I'm not sure.

3 MR. JOHNSON: You're right, Your Honor. It's J-o-n
4 L for Jon Lazarus.

5 THE WITNESS: Right. So this is not Jon Lazarus.

6 Q. BY MR. JOHNSON: Correct. This is John Ludwig, right?

7 A. Yeah, that's -- I believe so, yes.

8 Q. And this is Mr. Adler's notes from the retreat. Do you
9 see that, sir?

10 A. It says, "My notes from retreat." It's not copied to
11 me.

12 Q. And if you would turn to the page Bates stamped, ending
13 with 441, which is the third page of his notes from the
14 retreat. And I would draw your attention to the bottom of
15 the page, sir.

16 If we can bring that up.

17 "Ship extensible shell in Office. Three exclamation
18 points. Wire the features we need for Chicago into the
19 Explorer. For example, mail integration, printman, CPanel,
20 fonts, etc. Bill G sez," s-e-z -- "Bill G sez do it."

21 Now, Bill G would refer to you, correct, sir?

22 A. That's right. We never did an extensible shell in
23 Office, so I'm confused why his notes would say that.

24 Q. Well, his notes would say that because that's what you
25 told people should be done. Isn't it a fact, sir?

1 A. Absolutely not. If I had, you would find a development
2 plan, you would find activity, you would find shell code
3 shipping in Office. You would find something that related to
4 that. In fact, no shell ever shipped in Office. No -- the
5 Chicago shell stayed fully extensible. You know, this is
6 incorrect. We did not ship an extensible shell in Office.
7 We didn't begin work on an extensible shell in Office.

8 Q. Isn't it a fact, sir, that you approved of a plan to
9 ship the extensible shell in Office?

10 A. No, sir --

11 Q. Regardless of whether it ever happened?

12 A. -- that did not happen.

13 Q. Okay, sir. The Explorer referred to in Mr. Adler's
14 email, that would have been referring to the Windows Explorer
15 in Chicago, correct?

16 A. Yes.

17 Q. And one of the features Mr. Adler talks about to be
18 wired in was mail integration, right?

19 A. It's a thing he lists. I don't know what he means by
20 that.

21 Q. Well, you certainly know that, at the time, Capone was
22 the mail client that you were planning to ship with Windows
23 95, right?

24 A. It was one of our mail client projects. That's
25 right.

1 Q. And, of course, Capone, at this time period, in 1993,
2 was using the NameSpace extensions to integrate into Chicago.
3 Correct, sir?

4 A. It supported them at this time, yes.

5 Q. I'd like to show you now what's been marked Plaintiff's
6 Exhibit 55. This is two days later, after Mr. --

7 MR. TULCHIN: Your Honor, members of the jury have
8 their hands up.

9 THE COURT: Oh. Let's take a short break. Thank
10 you. Thank you.

11 (Short break.)

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