

1                   IN THE UNITED STATES DISTRICT COURT  
2                   DISTRICT OF UTAH, CENTRAL DIVISION  
3  
4   THE SCO GROUP, INC., a Delaware   )  
5   corporation,                            )  
6                   Plaintiff,                    )  
7       vs.                                    )   Case No. 2:04-CV-139TS  
8   NOVELL, INC., a Delaware            )  
9   corporation,                            )  
10                  Defendant.                    )  
11   \_\_\_\_\_  )  
12   AND RELATED COUNTERCLAIMS.        )  
13   \_\_\_\_\_  )

14  
15                   BEFORE THE HONORABLE TED STEWART  
16                   -----

17                                   March 8, 2010  
18                                   Jury Trial  
19                                   Jury Selection  
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24   REPORTED BY: Patti Walker, CSR, RPR, CP  
25   350 South Main Street, #146, Salt Lake City, Utah 84101

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A P P E A R A N C E S

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1 SALT LAKE CITY, UTAH; MONDAY, MARCH 8, 2010; 8:00 A.M.

2 PROCEEDINGS

3 THE COURT: Good morning. We are here in the case  
4 of SCO Group, Inc. vs. Novell, Inc. This is case 04-CV-139.  
5 Representing the plaintiff in this case is Mr. Brent Hatch,  
6 Mr. Stuart Singer and Mr. Ed Normand. Is that correct?  
7 Mr. Rick Fuentes is here as a jury consultant. Welcome.

8 On behalf of defendant we have Mr. Michael Jacobs,  
9 Eric Acker and Sterling Brennan. Good morning to all of  
10 you. I understand at your table is Mr. Dana Russell, Novell  
11 CFO, and Mr. -- is it Mr. or Ms. Tracy --

12 MR. BRENNAN: Ms. Tracy Farrell. She will be here  
13 shortly.

14 THE COURT: Tracy Farrell, who is also a jury  
15 consultant.

16 Counsel, let me go through a few matters here and  
17 then I'll see whether or not you have anything that is not  
18 covered.

19 Let me again remind you how we're going to select  
20 the jury. As soon as we've taken care of these preliminary  
21 matters, the Court will recess until the potential jurors  
22 have come down.

23 Sandy, do we have an idea how many jurors there  
24 are?

25 THE CLERK: I think there is going to be like 54.

1           THE COURT: She had asked for 55, and how many  
2 show up, we do not yet know. It will fill the courtroom.  
3 So all those people who are sitting in the seats behind the  
4 attorneys will probably have to find something else to do  
5 until the jury is selected.

6           The Court will ask the questions. One of the  
7 first questions that will be asked is to have the jurors  
8 stand and answer the juror questionnaire that I hope you all  
9 received a copy of before you left here after the final  
10 pretrial conference. After the Court has asked those  
11 questions that it thinks can be appropriately answered here  
12 in the courtroom in the presence of other potential jurors,  
13 the Court will ask a series of questions that will not be  
14 answered immediately. The Court will then have a brief  
15 side-bar where you will be given the opportunity to request  
16 that I ask additional questions.

17           After all the questions have been asked, the Court  
18 will then recess and bring those jurors who feel they have  
19 to answer the questions in the privacy of the jury room,  
20 we'll bring them into the jury room with you there and we'll  
21 make the inquiry of them what it is they need to answer. At  
22 that point, I will then inform you of those jurors that I  
23 intend to dismiss for cause.

24           We'll then return, have all the jurors here in the  
25 courtroom, and we'll then have you exercise your preemptory

1 challenges, and you each get three.

2 Are there any questions about that process,  
3 counsel?

4 MR. HATCH: No, Your Honor.

5 MR. ACKER: No, Your Honor.

6 THE COURT: I had requested from you that you  
7 supply me with a brief statement that I can read for the  
8 jurors during the process of the voir dire, but I have not  
9 seen it, so this is what I intend to ask.

10 This case involves a dispute between the plaintiff  
11 and the defendant over the ownership of an open-source  
12 computer program known as UNIX. Plaintiff asserts that the  
13 ownership of the copyrights to UNIX transferred from Novell  
14 to a predecessor to the plaintiff in agreements made in 1995  
15 and 1996. Defendant asserts that the agreements did not  
16 transfer ownership of the UNIX copyrights. Other claims and  
17 counterclaims between the plaintiff and defendant flow out  
18 of this dispute. Have any of you heard or read anything  
19 about this case.

20 Do either of you wish to object to that statement?

21 MR. SINGER: Your Honor, there is one aspect of  
22 that. First, let me indicate that we were able to work out  
23 yesterday afternoon a joint statement. The one point in the  
24 Court's statement that we think isn't accurate is referring  
25 to UNIX as open-source software. That would be accurate for

1 Linux, but not for UNIX.

2 THE COURT: If I just said ownership of a computer  
3 program known as UNIX?

4 MR. SINGER: That would be accurate, Your Honor.

5 THE COURT: Thank you.

6 Mr. Brennan.

7 MR. BRENNAN: Your Honor, as Mr. Singer  
8 indicated -- and we do apologize for the tardiness in  
9 reaching this agreement -- we do have an agreed statement  
10 perhaps we could tender to the Court.

11 THE COURT: Let me take it and I'll look at it  
12 after we recess and I'll see which one I think meets the  
13 needs of the Court.

14 MR. BRENNAN: May I approach, Your Honor?

15 THE COURT: Yes, please.

16 MR. BRENNAN: Just one comment. From our  
17 perspective, that is Novell's, the virtue of the agreed  
18 statement is it is agreed. And the other issue is in terms  
19 of the issue that will be decided by the jury, that issue is  
20 slander of title claims, not ownership claims. And for that  
21 reason, we believe that perhaps the agreed statement might  
22 be more descriptive for purposes of the jury.

23 THE COURT: I will take a look at it.

24 MR. HATCH: Your Honor, I would point out, the  
25 reason we had a dispute is because we had actually asked for

1 some additional language. We think that IBM is  
2 interconnected with this enough that it should have been  
3 mentioned. So that's why we had an extra --

4 THE COURT: See, that's what I'm not going to do.  
5 I'm not going to get into -- I think it's highly unlikely  
6 that I'm going to agree to your statements because I think  
7 you are both using it to argue the case. That's not what  
8 the Court intends to do. The Court, by making that  
9 statement, just simply wants to bring it to the potential  
10 jurors' attention what this case is about so they can have  
11 their memories prompted as to whether or not they know  
12 something about it.

13 MR. HATCH: I agree, and we can live with Your  
14 Honor's statement.

15 THE COURT: All right.

16 Again, we agreed at the final pretrial conference  
17 that we would have 13 jurors. One will be an alternate  
18 juror, but we'll not reveal to that juror that he or she may  
19 be an alternate until the end of the trial.

20 Are we still in agreement on that, counsel?

21 MR. BRENNAN: We are, Your Honor.

22 MR. HATCH: Yes, Your Honor.

23 THE COURT: During the course of the jury  
24 selection this morning, I will ask that you introduce  
25 yourselves and everyone at your table, as well indicate the

1 witnesses that you intend to call. I believe I mentioned to  
2 you that I would ask that you identify them with something  
3 as simple as who they work for, where they live, nothing  
4 extensive, but some identifying characteristic to bring some  
5 context to the name of the individual. And I'm sure that is  
6 going to be easy for you to do, but I just wanted to remind  
7 you of that fact. Again, keeping in mind the whole purpose  
8 of it is to try to make certain we don't have potential  
9 jurors sitting here who may know those individuals. They  
10 may hear a name but not realize they may work for so and so  
11 company, live in such and such a place, and that simply  
12 helps those potential jurors.

13 Just for your information, it would be my  
14 intention to read the statement of uncontroverted facts  
15 immediately after the preliminarily instructions. My guess  
16 is that, at a minimum, we'll select the jury, give them  
17 preliminary instructions and perhaps the uncontroverted  
18 facts today. As I think we agreed at the final pretrial  
19 conference, if we cannot get both of your openings in today,  
20 we'll hold them over until tomorrow. That's based on the  
21 assumption that you both represented you would take an hour.

22 Is that still the fact, Mr. Brennan?

23 MR. BRENNAN: It is for Novell, Your Honor.

24 MR. HATCH: It is, Your Honor.

25 THE COURT: Do I understand, Mr. Brennan, you will



1 want to make your statement immediately after the plaintiff,  
2 you will not want to wait until they have presented their  
3 case?

4 MR. BRENNAN: That would be our preference, Your  
5 Honor.

6 THE COURT: Let me make you aware now, though it  
7 is a long way away, I intend to instruct the jury with jury  
8 instructions before your closings so you will have the  
9 opportunity of referring to the jury instructions in your  
10 closing statements.

11 Counsel, a couple of questions have been raised  
12 regarding the designations of depositions. And I will first  
13 have to say to you, that it is my hope that you will work  
14 together and try to resolve those disputes over what  
15 portions of either written or video depositions are to be  
16 presented. In most cases -- in fact, with the exception of  
17 one case that I can think of in my years as a judge, those  
18 have been worked out by the counsel, and it's usually based  
19 upon the premise, okay, we'll compromise on this if you'll  
20 compromise on yours and let's just let it in. I would  
21 strongly encourage you to try to do that.

22 If you can't, however, and there are still  
23 disputes over portions of depositions, I would request that  
24 at least a day, if not two days before you intend to use it  
25 you submit to the Court those portions of the transcripts of

1 the depositions. Even though we are talking about a video  
2 deposition, I want it in a written transcript form, and then  
3 a notation of the objection to it.

4 In fact, I'm going to request that it be two days  
5 before because I then will want to have at least one day to  
6 get the other side to make their reaction to the objection  
7 known to the Court. So would you please try to keep those  
8 deadlines in mind. I hope you can work these things out so  
9 there is a minimum of objections being brought to the Court  
10 for the Court to decide.

11 Do you have any questions about that, counsel?

12 MR. HATCH: No, Your Honor.

13 MR. BRENNAN: No, Your Honor.

14 THE COURT: Thank you.

15 A question has been raised about Mr. Messman, and  
16 you both have responded in writing. And let me just ask  
17 whether or not either of you wish to supplement what now has  
18 been provided in writing before the Court tells you what I  
19 think I need to do?

20 Mr. Hatch, you took first shot, then there was a  
21 response. Do you want to reply?

22 MR. HATCH: Yeah. Just short, Your Honor.

23 We have since found out Mr. Messman is apparently  
24 going to board meetings, which we believe he could be -- he  
25 could certainly participate by telephone. We think it's

1 prejudicial if they are going to call him live, that we  
2 ought to be able to do the same. He's key enough to this  
3 case that he ought to be called early in the case.

4 But I think what we were looking for is not really  
5 a violation of the rules. It's no different than -- in a  
6 sense it's slightly different, but within the province, of  
7 taking a witness slightly out of order to accommodate other  
8 witnesses. That's what we have asked.

9 If they are really not going to bring him live for  
10 our case, then we be able to at least start the case, given  
11 his key nature, leave his deposition open, and allow other  
12 witnesses to be potentially called out of order until we can  
13 complete his testimony. We prefer him here, you know, if  
14 that can be done. If not, leave his testimony open and  
15 allow us to continue the direct when he does arrive.

16 THE COURT: Mr. Acker.

17 MR. ACKER: Yes, Your Honor.

18 We have no problem with them playing his  
19 videotaped deposition, as the rules would allow for an  
20 unavailable witness in their part of the case. We just ask  
21 that our counters be played with that. If they want to take  
22 him out of order in our case, we're fine with that as well.  
23 They can call him live and leave their case open until he's  
24 available on the 24th. He's out of the country on business  
25 starting tomorrow through the 21st of March.

1           THE COURT: I have no reason to presume that you  
2 are not representing the facts when you say you have no more  
3 control over him, that you've got him to agree to come here  
4 for your case.

5           So, counsel, the only question the Court would  
6 have, presuming that to be true, is whether or not it would  
7 be appropriate to have your case include both the live  
8 deposition as well as the live witness. And that does  
9 concern the Court a little bit. I would much prefer that  
10 you simply not rest on your case and then present  
11 Mr. Messman as your witness when he is here available and  
12 have the other side deal with it with their case on cross  
13 or, in effect, redirect because they are calling him as  
14 well. I would prefer that to a partial video deposition and  
15 then bringing him on live later.

16           MR. HATCH: The problem with that is he's a key  
17 witness and we really need to have -- you know, it really,  
18 messes up our presentation of our case if we're not allowed  
19 to put him on early -- very early in the case. If they are  
20 saying they don't have control over him, we don't even know  
21 when he shows up, which literally could be the last day of  
22 witness testimony after three weeks, whether he will even  
23 show and we end up reading the deposition anyways.

24           THE COURT: Would you object to them being allowed  
25 to designate portions of his video testimony during your

1 primary presentation by video deposition?

2 MR. HATCH: That would be fine, Your Honor.

3 THE COURT: Is that all right?

4 MR. HATCH: Sure.

5 THE COURT: Let's do that. Why don't you work out  
6 his presentation and then you call him.

7 MR. ACKER: We've already given them the clips.  
8 The clips are done. So if they want to play the video, they  
9 play their video, our video, and he will be here on the  
10 24th.

11 THE COURT: But it is still presumed you will not  
12 rest until after he's been presented on the 24th?

13 MR. HATCH: Yes, Your Honor. The only opposition  
14 would be when he comes back, do we continue or do they --  
15 who calls him first? It would still be our case.

16 THE COURT: It would still be your case, yes.

17 MR. HATCH: Thank you, Your Honor.

18 THE COURT: Counsel, let me make you aware that it  
19 will be my intention, after the jury has decided this case,  
20 that I will request of you proposed findings of fact and  
21 conclusions of law on those issues that will remain for the  
22 Court -- which as it has turned out have been more than I  
23 expected -- probably within ten days of the trial ending. I  
24 understand you are receiving daily transcripts, so I think  
25 you ought to be able to monitor that information. So keep

1 that in mind. And if that seems difficult at the end of  
2 trial, if you want to argue for a length of time beyond ten  
3 days, I will certainly give you a chance to do that. But  
4 that's what I would have in mind. What I mean by that, on  
5 the same day you will both present to me your proposed  
6 findings of fact and conclusions of law on those issues for  
7 the Court to decide.

8 Any questions about that?

9 MR. SINGER: Your Honor, not about that but about  
10 the related issue. It's our understanding that in the  
11 course of this trial we'll present the testimony that's  
12 relevant to the issues that Your Honor will be deciding in  
13 the ordinary course of our case, and then the proposed  
14 findings and proposed conclusions of law will be the  
15 arguments, so to speak, on that and we don't need to address  
16 that in front of the jury in terms of argument.

17 THE COURT: Mr. Brennan.

18 MR. BRENNAN: Yes. Thank you, Your Honor.

19 Reflecting upon that, we actually have a different  
20 suggestion that we would like to tender to the Court. One  
21 of the issues that we have here is that essentially there  
22 are four claims that are before the Court, some jury issues  
23 obviously, and some Court issues. The ones that we  
24 understand that are to be decided by the jury are limited  
25 solely to the respective slander title claims, whereas the

1 specific performance and the breach of the implied covenant  
2 claims have been agreed to be Court issues.

3           We think that we run the risk of confusion to the  
4 jury if we are presenting evidence that is solely limited,  
5 for example, to the breach of the implied covenant claim  
6 that does involve IBM, where the jury will be hearing  
7 evidence on the issue, they won't be deciding it, they won't  
8 be given instruction, and it will be difficult and we  
9 believe, as I said, confusing to the jury to try to parse  
10 through that.

11           Our suggestion is there is a way to deal with that  
12 that we hope would minimize inconvenience to the jury and  
13 also limit inconvenience for the Court. Here's the  
14 proposal. We think that there are a limited number of  
15 witnesses who might be called that would have testimony or  
16 present evidence, for example, that go to the issue of the  
17 breach of the implied covenant claim. That has to do with  
18 this waiver issue under the asset purchase agreement, and it  
19 does involve the waiver relative to IMB and others. We  
20 believe, from Novell's perspective, it's probably just two  
21 or three witnesses, at most, that Novell would be tendering  
22 that would provide evidence on that subject. They likely  
23 would be the same witnesses that would be presented through  
24 cross-examination or otherwise by SCO Group.

25           The suggestion that we make is that for those

1 witnesses, we could identify in advance to the Court when  
2 they would be called. They could remain an extra 20, 30  
3 minutes, whatever the time frame would be, after the jury is  
4 excused, and the testimony that's relevant solely to the  
5 issues decided by the Court could be presented then. They  
6 could be a lengthy exposition. On Novell's side, we think  
7 it will go pretty quickly. But that way we would avoid, I  
8 think, the jury wondering about issues and claims that it  
9 won't decide.

10 So that would be our suggestion. We think it can  
11 be done efficiently. We think we can avoid prolonging a day  
12 for Your Honor and also avoid confusion for the jury.

13 THE COURT: Thank you.

14 Mr. Singer, your response.

15 MR. SINGER: Your Honor, first of all, we think  
16 virtually all of the evidence that would come in is going to  
17 be relevant to the issue of intent. These events occurred  
18 during the same period of time. And it is part of our case  
19 to show that relationship with IBM, their waiver to claims  
20 that also prompted these slanders of our ownership of the  
21 copyright.

22 Secondly, the same witnesses, and there are more  
23 than three or four, who testify about the intent of the  
24 agreement -- for instance, Mr. Frankenberg, who is the first  
25 witness we're going to be calling -- who also have things to



1 say about the intent of this provision of the agreement. So  
2 a number of these witnesses are no longer involved with the  
3 parties and it would be an inconvenience for them to have to  
4 split up their testimony in that way.

5 The principal point I would make, I think almost  
6 all of this is going to be relevant to the issue of the  
7 intent by Novell during this same period of time.

8 THE COURT: Counsel, thank you.

9 The Court, I think, is very sympathetic to  
10 Mr. Brennan's point. I, in turn, have worried a little bit  
11 about that. So what I'm going to request is if there is in  
12 relation to a specific witness a -- first of all, I do not  
13 intend to make any witness come back to testify separately  
14 on those issues for just the Court. But if for any witness  
15 the timing of it is such that we can clearly excuse the jury  
16 early at the end of the day, or perhaps hold them and have  
17 them take a longer lunch break, or something like that, to  
18 finish up a witness and let me hear the evidence, the  
19 testimony alone without the jury, then let's do that for a  
20 specific witness. But let's not try to make a firm rule for  
21 all those witnesses that will deal with those issues at this  
22 point in time. We'll have to play it by ear as the trial  
23 unfolds.

24 MR. BRENNAN: Thank you, Your Honor.

25 Your Honor, just one afterthought. My apologies.

1 I wonder if there might be wisdom in some sort of brief  
2 instruction to the jury that they might hear some matters  
3 that don't pertain --

4 THE COURT: Actually, Mr. Copeland sent me a note  
5 while we were talking and he made that very suggestion. So  
6 I think if you want to include that in your -- if you want  
7 to -- well, I have one right here. Never mind. We'll give  
8 them that instruction, what my law clerk has just e-mailed  
9 to me.

10 MR. BRENNAN: Thank you.

11 THE COURT: All right.

12 I believe I now have all of the exhibits on my  
13 computer. Maybe I don't. I don't. I don't have  
14 plaintiffs.

15 Do you have a DVD for me, Mr. Hatch?

16 MR. HATCH: Yes.

17 THE COURT: Thank you.

18 Counsel, do you have anything else before I excuse  
19 myself and we bring the jurors in?

20 MR. SINGER: Yes, Your Honor.

21 We had met and resolved most of the issues  
22 yesterday regarding each other's demonstratives for opening.  
23 There remain a number of issues, not a lot, but a few, that  
24 we're going to need the Court's decision on. We could deal  
25 with that now or later.

1 THE COURT: Why don't we deal with it now, Mr.  
2 Singer.

3 MR. SINGER: Your Honor, if I might approach the  
4 podium?

5 THE COURT: You may.

6 MR. SINGER: One of those issues concerns a time  
7 line indicating the claims of ownership which are the source  
8 of the slander. There is an objection by Novell to us  
9 mentioning as part of that the copyright registrations. One  
10 of our claims is that Novell, by registering copyrights in  
11 September of 2003, that in itself was a slander of title,  
12 false statement. Novell had raised a motion in limine,  
13 number eight, on that point. That was denied.

14 So while we understand they disagree with that  
15 evidence, we think it's appropriate for us to make reference  
16 to it and to include it on the chart, which otherwise they  
17 find unobjectionable.

18 Mr. Brennan, your response.

19 MR. BRENNAN: Yes. Thank you, Your Honor.

20 I believe Mr. Singer accurately describes the  
21 objection. What we had argued to the Court in the motion in  
22 limine was that copyright registration activity falls within  
23 the scope of protected activity. Under the Noerr-Pennington  
24 doctrine, it's a petitioning the government for redress.

25 The Court did deny the motion in limine but also

1 suggested if there were additional authorities that the  
2 parties wished to submit that appeared to be in line with  
3 the notion that a copyright application was more than a  
4 mere ministerial act, that we ought to submit those  
5 authorities.

6 In connection with proposed jury instructions, we  
7 did present additional authorities that we believe would be  
8 sufficient to demonstrate to the Court's satisfaction that  
9 the activity involved with copyright registration falls  
10 within the scope of the petition exclusion. We have  
11 submitted those authorities to the Court.

12 And in my discussion with Mr. Singer yesterday,  
13 when he presented the proposed demonstrative, I suggested  
14 that because it remained a debated issue and we had supplied  
15 the authorities to the Court, that I thought that we ought  
16 to await further resolution from the Court on that  
17 particular issue before it was included in the demonstrative  
18 to the Court.

19 THE COURT: I will look at those authorities, Mr.  
20 Singer, and hopefully before the end of today I will be able  
21 to tell you whether or not I am persuaded to reverse the  
22 ruling on the motion in limine number eight.

23 MR. SINGER: May I briefly respond to what  
24 Mr. Brennan just said?

25 THE COURT: You may, yes.

1           MR. SINGER: Your Honor, we think there may be  
2 fair argument on whether a Noerr-Pennington instruction is  
3 appropriate and have our own authorities on that. However,  
4 there are two points which make clear, in our view, that we  
5 should be allowed to tell the jury about the copyright  
6 registrations. Number one, there is an exception to the  
7 Noerr-Pennington doctrine if the jury were to conclude as a  
8 matter of intent that that was not done in good faith. So  
9 that would be an issue the jury would need to decide in any  
10 event even if an instruction were given. And, second, the  
11 fact their copyright registration was then re-published in  
12 December and other times outside of just the application to  
13 the government made in September. So we believe Your  
14 Honor's decision was correct on the motion in limine and  
15 would like to be able to provide an opening statement in  
16 accordance with that ruling.

17           THE COURT: All right. Thank you, Mr. Singer.

18           MR. SINGER: Your Honor, the second issue that we  
19 have concerns a document -- well, there are two documents  
20 which have sort of been grouped together on this. There is  
21 a document that we would like to use in opening, which is a  
22 Wall Street Journal article that was published right at the  
23 time of the sale which talks about the deal and which  
24 Mr. Frankenberg says was an accurate statement and, if it  
25 wasn't accurate, put people on notice in a very public

1 manner as to what was an understanding of the deal to  
2 represent. So we think that that should be admissible.

3 THE COURT: Are you intending to have it admitted  
4 as an exhibit during the course of trial?

5 MR. SINGER: We are, Your Honor?

6 THE COURT: Mr. Brennan.

7 MR. BRENNAN: Yes. Your Honor, there are several  
8 news reports and articles involved in the case. We  
9 suggested in our meet and confer with plaintiff's counsel  
10 that the agreement of the parties would be that if there  
11 were news articles that would be presented to witnesses to  
12 indicate intent or that otherwise they would be examined  
13 about, that we could reach an agreement that they could be  
14 used for that purpose. If we had that agreement, then they  
15 could use the demonstrative that's been suggested.

16 If, on the other hand, what was going to be done  
17 is there was going to be an article-by-article objection and  
18 there wasn't going to be a general understanding, at least  
19 these news articles could be used to present to witnesses to  
20 ask them about it, to see if they were aware of it, to find  
21 out what they did in reaction to it, but we have an  
22 objection to using this demonstrative in advance of an  
23 evidentiary ruling.

24 So Novell's position in this regard, Your Honor,  
25 is we don't have an objection to the use of the

1 demonstrative that's been tendered if there's an equal  
2 understanding that other news articles that would be  
3 tendered for the same purpose could also be used by Novell.  
4 So it's a bit of a tit for tat or quid pro quo sort of  
5 arrangement.

6           Again, we don't object if, in turn, Novell can use  
7 them for the same purpose and we're not going to have a  
8 fight over that. Otherwise, I think we're going to have to  
9 go through the process of examining each of the articles and  
10 deciding whether they independently can be admitted. And if  
11 we can't do that now, I think it's unfair to present an  
12 objected document as part of opening.

13           So we're mindful of the suggestion, and we're  
14 agreeable to it as long as it works both ways.

15           THE COURT: Mr. Singer.

16           MR. SINGER: Your Honor, for certain documents, we  
17 wouldn't have an objection. The Wall Street Journal, we  
18 think, is one thing. But the article which Novell plans to  
19 use in opening, which we objected to, says SCO, our client,  
20 is the most hated company in tech. And if the actual  
21 document were to be admitted into evidence, on the first  
22 page it has prejudicial statements such as they -- referring  
23 to SCO -- are a cornered rat, and I think they have rabies  
24 to boot. So that, we think, is totally improper to go  
25 before the jury.

1           THE COURT: Counsel, the Court is not going to  
2 allow you to use any exhibit in an opening statement that is  
3 not going to be clearly admissible and the other side has  
4 agreed to it. So until you can get an agreement on it, it  
5 will not be permitted in opening.

6           MR. SINGER: We understand both of these, then,  
7 will not be.

8           Your Honor, there is an exhibit which is in the  
9 form not of a videotaped deposition but part of the actual  
10 publication of the slander. It is Mr. Stone, who was an  
11 executive at Novell, standing up in March of 2004 and saying  
12 at a public conference, we still own UNIX. We have a  
13 videotape of that excerpt. Mr. Stone, in his deposition,  
14 acknowledged that it was accurate. And we believe that is  
15 different than a videotaped deposition. That is the actual  
16 evidence and we should be allowed to play that in front of  
17 the jury.

18          THE COURT: Mr. Brennan.

19          MR. BRENNAN: Well, I'm not certain how it's  
20 different than a video deposition. At least a video  
21 deposition has the benefit of being statements under oath  
22 rather than some public performance.

23          THE COURT: Is this video going to be admitted at  
24 trial?

25          MR. SINGER: Yes, Your Honor.



1           THE COURT: Do you have any reason to believe it's  
2 not going to be admitted?

3           MR. BRENNAN: We believe that what might be  
4 permitted is the transcript of the presentation, and we  
5 don't have objection to reference to the transcript during  
6 opening argument. The concern we have is akin to what was  
7 addressed with the videotaped presentations during openings.  
8 So our objection is if they want to read to the jury the  
9 statement that was made, they are welcome to do that. But  
10 if we're going to have dueling video presentations during  
11 the opening, we have a concern over that.

12          THE COURT: Mr. Brennan, I appreciate the  
13 argument, but unless you can tell me you really think it's  
14 going to be precluded by a ruling by the Court, and my  
15 assumption is it's going to be admitted, if it's going to be  
16 admitted as evidence, it's very different from a video  
17 deposition. So the Court is going to permit its use in the  
18 opening.

19          MR. SINGER: Thank you, Your Honor. That takes  
20 care of the issues that we're aware of regarding the opening  
21 demonstratives.

22          THE COURT: Mr. Brennan, do you have some as well?

23          MR. BRENNAN: Excuse me. I've got a frog in my  
24 throat this morning.

25                 There was another demonstrative that we had

1 presented to SCO's counsel, and essentially it was a  
2 reproduction of the minutes of the board of directors of  
3 Novell held the day before the asset purchase agreement was  
4 signed. This was September 18th, 1995 at which the board of  
5 directors of Novell approved the asset purchase agreement.  
6 We do intend to present that to several witnesses during the  
7 course of trial. We do expect that the board of directors  
8 meeting minutes themselves would be admitted and we would  
9 like to make reference to those minutes during our opening.  
10 And, as I understand it, there was an objection raised. So  
11 I wanted to flag that for the Court.

12 THE COURT: Mr. Hatch.

13 MR. HATCH: Yes. Your Honor, we objected to this  
14 as a hearsay document previously when the documents were  
15 exchanged between the parties. We believe that the portion  
16 of this particular document that they are offering it for is  
17 essentially hearsay within hearsay. We have cases that  
18 would indicate this type of record shouldn't be admitted for  
19 this purpose, and we are disputing this document.

20 I'm also a little concerned about how this  
21 document came to be. Your Honor, we met yesterday to  
22 exchange slides. As part of that, you know, seeing other  
23 people's demonstratives and what they were doing, -- and  
24 that always gives the other side a little bit of a peak into  
25 what the other folks are doing -- this is a slide that was

1 produced to us after that meeting. And, you know, we feel  
2 pretty much -- in that meeting where we disclosed  
3 Mr. Frankenberg is going to be our first witness,  
4 Mr. Thompson second, this slide appeared, which directly  
5 tries to contradict Mr. Frankenberg. So I think there is a  
6 little bit of a fair play issue here as well. If we're  
7 going to have those kinds of meetings to be able to  
8 accommodate each side's ability to object, we ought not to  
9 be able to get an advantage like that off it either.

10 In any event, it's objected to. I believe that  
11 the cases show that it's -- there are probably cases both  
12 ways, but there are certainly cases that indicate -- we have  
13 the Simmons Food case out of the Tenth Circuit, 2003, the  
14 Bookworld Trade case --

15 THE COURT: Do you that written down?

16 MR. HATCH: I can give you these.

17 THE COURT: Do you have some authority for your  
18 side, Mr. Brennan?

19 MR. BRENNAN: I'm sure we could provide some, Your  
20 Honor.

21 Just so we're all clear here, these are the  
22 meetings of the board of directors. Mr. Frankenberg is  
23 their first witness. He authenticated the document in his  
24 deposition. He indicated it had been reviewed. These are  
25 official business records of Novell.

1           THE COURT: I am very much inclined to believe  
2     it's going to be admissible, but I do want to give the other  
3     side the courtesy of looking at their authorities. If you  
4     want to give us something as early today as you can, then  
5     we'll look at both of them and let you know before the end  
6     of the day.

7           MR. BRENNAN: We would be pleased to do that, Your  
8     Honor. And I don't want to belabor the point, there was  
9     certainly no intent to sandbag anyone. We had our meeting  
10    yesterday. When I got back to the office and I realized we  
11    failed to include this, I immediately e-mailed it over  
12    yesterday.

13          THE COURT: My guess is, Mr. Hatch, you could be  
14    fairly surprised that they were going to offer it, so you  
15    may feel like you were sandbagged, but I don't think that --  
16    again, that you could be fairly surprised that it was going  
17    to be offered as evidence.

18          MR. HATCH: I understand. There is no question  
19    both sides got to see that and are going to be able to have  
20    at least some sense of what others are doing in their  
21    opening and, undoubtedly, we can't get away from that. I  
22    think creating new slides after that goes beyond that.

23                 Can I submit this on this paper?

24          THE COURT: Give them to Mr. Copeland.

25                 Mr. Brennan, do you have anything else?

1           MR. BRENNAN: I would just ask Mr. Hatch if at  
2     some point we could get those authorities ourselves.

3           THE COURT: We'll make a copy of what he just gave  
4     us and bring it right out to you.

5           MR. BRENNAN: Your Honor, I just have a very few  
6     brief housekeeping matters, if I might?

7           THE COURT: Yes.

8           MR. BRENNAN: In our discussion yesterday, we  
9     talked about the best way to handle deposition transcripts.  
10    We're mindful of the Court's instructions, we understand it,  
11    for the strong preference of original certified transcripts.  
12    There are a few instances, I believe, where we have the  
13    transcripts but they may not be the original certified  
14    transcripts. As I understand the agreement, between counsel  
15    at least, we would agree that if we were not able to obtain  
16    in time for presentation in court the original certified  
17    transcripts, that the parties would agree that copies could  
18    be used. But we're also mindful perhaps of the Court's  
19    concern in that regard and wanted to raise that issue with  
20    Your Honor.

21          THE COURT: If there is no dispute between the  
22    parties, then I will not be unduly concerned with it. I am  
23    surprised that the original transcripts would somehow not be  
24    available. You don't need to explain it. I just was  
25    expressing myself.

1           MR. BRENNAN: I just feel duty-bound to let you  
2 know so there's not a feeling of inadequacy on counsel's  
3 part. These transcripts likely are from a case, the IBM  
4 case, where many depositions were taken where, for example,  
5 Novell was not a party to that action.

6           THE COURT: That's a quick and easy explanation.

7           MR. BRENNAN: Thank you.

8           THE COURT: Did you have anything else?

9           MR. BRENNAN: Your Honor, there are a couple of  
10 other matters, but I don't think we need to take the Court's  
11 time with them now and we likely could raise them at some  
12 other point. They don't impact what the Court will be doing  
13 this morning with the jury selection.

14          THE COURT: Mr. Hatch.

15          MR. HATCH: I promised at the pretrial that I  
16 would introduce Judge Edward Cahn, who is the Chapter 11  
17 trustee, who is with us, and Bonnie Fatell, who represents  
18 him.

19          MR. CAHN: Good morning, Your Honor.

20          THE COURT: Good morning to you.

21                 Which reminds me, counsel, during the course of  
22 the trial, is it possible that counsel who are not currently  
23 sitting at the tables may be appearing and examining or  
24 cross-examining the witnesses, or do I have the full cast of  
25 characters in front of me right now?

1 MR. HATCH: You do, Your Honor. We're here.

2 MR. BRENNAN: Your Honor, it's likely that the  
3 cast of characters you see here for Novell will be the sole  
4 presenters, but there is a possibility that we would have  
5 another lawyer that would be involved in examining, and we  
6 certainly would introduce --

7 THE COURT: That's all I request is that if  
8 someone else shows up at the table one morning, will you  
9 make certain I'm introduced to that person?

10 MR. HATCH: Certainly.

11 THE COURT: Anything else?

12 MR. SINGER: No, Your Honor.

13 THE COURT: Mr. Brennan.

14 MR. BRENNAN: No. Thank you, Your Honor.

15 THE COURT: I'll excuse myself until we have the  
16 jurors in the courtroom.

17 MR. HATCH: Your Honor, for this portion, do you  
18 have a problem if we switch to the other side of the table?

19 THE COURT: No, not at all. Make yourselves not  
20 uncomfortable, but make yourselves where you can observe  
21 what you need to observe here.

22 MR. HATCH: Thank you.

23 (Recess)

24 THE COURT: Good morning, ladies and gentlemen.

25 This case is entitled the SCO Group, Inc. vs.

1 Novell, Inc. It is case 04-CV-139.

2 Let me make you aware of the attorneys who are  
3 here this morning. On behalf of the plaintiff we have  
4 Mr. Brent Hatch, Mr. Stuart Singer, and Mr. Ted Normand.  
5 Representing the defendant we have Mr. Michael Jacobs, Eric  
6 Acker, and Sterling Brennan.

7 Ladies and gentlemen, I want to begin by first  
8 thanking you for being here today. Regardless of whether or  
9 not you are selected as a juror, the fact that you are here  
10 today is a very important public service.

11 The Constitution of the United States,  
12 specifically the bill of rights, provides that in civil  
13 cases in federal court that there is a right to a jury. If  
14 we did not have individuals such as you who are willing to  
15 take your time to be here to allow us to select a jury, and  
16 those of you 13 in number who will ultimately be asked to  
17 serve as jurors in this case, if they were not willing to  
18 serve, then our entire judicial system would collapse. And  
19 if we did not have an operating judicial system in this  
20 country, we would not have a country.

21 So I want to, again, thank you for being here, and  
22 I'm speaking on behalf of myself, as the judge, Judge Ted  
23 Stewart, and also the parties and their counsel who have  
24 been introduced to you here today.

25 I believe it was explained to you upstairs that



1 your role will be to hear and decide the facts in this case.  
2 It will be my responsibility to tell you what the law is.  
3 It will be my responsibility to deal with other issues  
4 during the course of trial that perhaps you will not be able  
5 to understand. But please keep in mind that ultimately your  
6 responsibility will be to decide the facts based upon the  
7 evidence that you hear as presented by the counsel through  
8 their witnesses and exhibits and then to apply the law as I  
9 explain it to you at the appropriate time.

10 Just by way of introduction, let me introduce  
11 again myself. I am Judge Ted Stewart.

12 This is Sandy Malley, who is my courtroom deputy,  
13 case manager. Those of you who will be asked to serve as  
14 jurors in this case will get to know her because she will be  
15 largely responsible for taking care of you during the course  
16 of the trial.

17 This is Patti Walker, who, along with others,  
18 during the course of this trial will be responsible for  
19 making a record, a transcript of these proceedings.

20 And over here is Mr. Tom Copeland, who is an  
21 attorney, who is a law clerk and has the responsibility of  
22 helping me during the course of this trial.

23 You have been randomly selected and you are seated  
24 in a specific order so that we can get to know you during  
25 the course of this jury selection. You are numbered juror

1 number one, Mr. XXXX XXXXXX, through potential juror number  
2 52, Mr. XXXXXXXX XXXX.

3 Mr. XXXX, will you raise your hand so we know --  
4 thank you.

5 During the course of this jury selection, which is  
6 going to take the better part of this morning and perhaps  
7 into the early afternoon, at least on one occasion you will  
8 be allowed to leave the courtroom. I do have to request  
9 that when you return, make certain you sit in the same seat  
10 that you are sitting in right now. During the course of  
11 jury selection, we'll get to know you more by your number  
12 than we will your name. If you don't sit in the same order,  
13 then we become confused very, very quickly.

14 I am now going to ask you all to stand and raise  
15 your right hand, and Ms. Malley is going to administer an  
16 oath to you. This oath has to do with your conduct during  
17 the course of jury selection. So listen to it carefully.  
18 If you can agree to the oath, I want you to so designate by  
19 saying yes or I do.

20 (Jury panel sworn)

21 THE COURT: We'll now undertake the process of  
22 selecting 12 of you to serve as jurors and one of you to be  
23 an alternate juror. As soon as this process is done, we'll  
24 be able to excuse the rest of you. As I indicated, it may  
25 take all morning and perhaps into the early afternoon for

1 this jury selection.

2           It is expected that this trial is going to take 15  
3 trial days, which translates into three weeks. Keep in mind  
4 that the trials will be run from 8:30 in the morning until  
5 1:30 in the afternoon. I don't believe that there will ever  
6 be an occasion when you will be here later than 1:30, or  
7 perhaps a few minutes after 1:30 if we need to finish up  
8 with a witness or a matter. So I would like you to keep  
9 that in mind when you are asked the question whether or not  
10 that's going to present a problem for you. I'm sure there  
11 are those of you who are thinking how will I conduct my  
12 business, do the other things that I have to do. Please  
13 keep mind you will have your afternoons and evenings free  
14 during the course of the trial.

15           One exception to that will be at the end of trial.  
16 When the trial is over, you, as a jury, will be asked to  
17 deliberate as long as it takes to reach a unanimous verdict.  
18 So the last date of trial and perhaps for a period after the  
19 last day, you will be here longer than that 1:30 in the  
20 afternoon.

21           During the course of the 8:30 to 1:30 trial, we'll  
22 take two breaks, roughly 15 to 20 minutes in length, and  
23 there will be some type of refreshments during both breaks.

24           Let me indicate to you, ladies and gentlemen, that  
25 we are looking for people who are able to accept their

1 limited role as jurors in that, as I've already said, it  
2 will be my responsibility to tell you what the law is and  
3 you are to decide the case, the facts from the evidence that  
4 you hear. We're looking for people who will hear and decide  
5 this case without any bias or prejudice. We're looking for  
6 people who are open-minded and able to listen carefully and  
7 make decisions. We're looking for people who have common  
8 sense and judgment.

9 I now need to ask you five questions that will  
10 either qualify you or disqualify you to serve as a juror in  
11 this federal court. Please listen carefully. And if you  
12 cannot affirm to all five of these qualifications, I'm going  
13 to ask you to come up and indicate to me why you may not be  
14 able to after you have heard them.

15 First of all, to serve as a juror in this federal  
16 court, you have to be able to affirm or assert that you are  
17 a citizen of the United States, 18 years of age or older,  
18 and that your primary residence for the past year has been  
19 the State of Utah; second, that you read, write and  
20 understand the English language; third, that you speak the  
21 English language; fourth, that you have no physical or  
22 mental disability that would interfere with your ability to  
23 serve as a juror; and, finally, that you do not have a  
24 charge pending against you for the commission of nor have  
25 you ever been convicted either by your guilty plea or a null

1 contender plea or by a court or jury trial of a state or  
2 federal crime for which punishment could have been for more  
3 than one year, unless your civil rights have been restored  
4 by amnesty or pardon.

5 Ladies and gentlemen, is there any one of you who  
6 cannot affirm to these five basic qualifications? If so,  
7 would you please stand.

8 Mr. XXXX, could I have you come forward, please.

9 (Side-bar)

10 THE COURT: Ladies and gentlemen, I'm going to ask  
11 that you now stand and introduce yourselves for us by  
12 reading the answers to the questions on that questionnaire  
13 that you received upstairs. And there are a couple of  
14 things that I want to stress. First of all, one of the  
15 questions -- I know I have my copy of it here somewhere --  
16 is what magazines do you read, what books or magazines --  
17 excuse me, the question is I like to read and it's asking  
18 you what books, magazines, newspapers, et cetera. It's  
19 quite common for potential jurors to say I like to read  
20 books. That's not particularly helpful to us, okay. What  
21 we need to do is answer what types of books, whether it's  
22 fiction or biographies or history.

23 Also, as to magazines, what type of magazines do  
24 you like to read. You don't have to mention all of them by  
25 any means, but if there is just a general category, do so,

1 but please be more specific then simply I like to read  
2 magazines.

3 Secondly, the last four questions, perhaps five  
4 questions are very often all answered no. And if that is  
5 the case, do not hesitate to say, Your Honor, as to  
6 questions 13, 14, 15, 16, 17 18, the answer is no, instead  
7 of saying no to 13, no to 14, no to 15, no to 16, no to 17,  
8 no to 18. All right. There may be other things that I have  
9 to remind you of during the course of this.

10 We'll proceed, beginning with Mr. XXXXXX, and then  
11 go, in turn, through Mr. XXXX at the end.

12 Mr. XXXXX, if you would, please.

13 THE CLERK: The other thing to remember is the  
14 transmitter is in the end of this mike, so do not hold it  
15 like that.

16 JUROR NO. 1: I was born and raised in Heber  
17 valley in 1940. I'm a self-employed rancher now. I cut  
18 hair for 47 years in Heber City before I retired. I am  
19 married to former XXXXX XXXXX. She's a retired teacher. I  
20 have four children, four adults. The oldest one is age 49,  
21 is a contractor. The next one is 47, he's a supervisor for  
22 Stein Eriksen Lodge. My third daughter is a housewife and  
23 mother. My daughter is a teacher, my other daughter. I  
24 completed high school and Salt Lake Barber College. My  
25 hobbies are hunting, traveling, any outdoor activities. I

1 ride a lot.

2 THE COURT: When you say you ride a lot, I presume  
3 you ride horses a lot?

4 JUROR NO. 1: Right.

5 THE COURT: Thank you.

6 JUROR NO. 1: I put in 45 years with the volunteer  
7 fire department in Heber City. I do like to read all  
8 materials. My books vary a great deal. Magazines, I read a  
9 lot of hunting magazines. And I will skip 13 through 17. I  
10 have not served on a jury.

11 THE COURT: Nor served in the military, correct?

12 JUROR NO. 1: Nor served in the military.

13 JUROR NO. 2: My name is XXXXXX XXXX. I'm juror  
14 number two. I have lived in West Jordan, Utah since 1990.  
15 I'm currently employed by a senior citizen recreation center  
16 and attend Westminster College. I'm single. I have no  
17 children. I have some college. My major is social sciences  
18 with an anthropology minor. My hobbies are anthropology,  
19 reading and outdoors. I currently don't belong to any clubs  
20 or organizations. I like to read biographies and fiction.  
21 I have not served as a juror. No to 13, 14 and 15, but my  
22 mom, XXXXXXXX XXXX, is a clerk at the Third District Court  
23 in West Jordan, Utah. And I have not served in the  
24 military.

25 THE COURT: Thank you.

1 JUROR NO. 3: My name is XXXXXX XXXXX. I'm juror  
2 number three. I've lived in South Jordan since 1998. I am  
3 currently employed by Salt Lake County Library Systems. I  
4 am currently married. My spouse has just graduated from  
5 college and is currently unemployed. I have attended some  
6 college. Currently -- previously it was for radiology  
7 technology and now it's going for computer systems  
8 information. My hobbies, of course, are computers, music,  
9 sewing. I love animals and cooking. I like to read mainly  
10 fiction books. However, because I work in a library and  
11 process magazines, I do read a lot of the computer magazines  
12 and the articles that are in them. I have served on a trial  
13 just last year. It was with the city courts. We did reach  
14 a verdict. It was not guilty. And it was a positive  
15 experience for me.

16 THE COURT: It was a criminal case?

17 JUROR NO. 3: It was a criminal case.

18 THE COURT: What did the case involve?

19 JUROR NO. 3: A DUI.

20 THE COURT: All right.

21 JUROR NO. 3: As to do I have a family member, my  
22 uncle, he's a lawyer in California. What he does, if he's  
23 criminal or civil, I have no idea. I have very, very rare  
24 contact with him. And I think that's everything. I have  
25 not served in the military.



1 JUROR No. 4: Good morning, Your Honor, ladies and  
2 gentlemen. My name is XXXXX XXXX. I'm juror number four.  
3 I currently reside in Riverton and have been there since  
4 late 2005. I am employed by Siemens Medical Solutions, but  
5 I also am going to night school at Columbia College  
6 Missouri. I am singe. I have an undergraduate degree and  
7 I'm working on my graduate degree.

8 THE COURT: What is your undergraduate degree?

9 JUROR NO. 4: It's in business, business  
10 administration.

11 My hobbies are reading, astronomy and,  
12 regrettably, remodeling. I am currently only a member of  
13 HIM and Utah HIM, health information management. I have  
14 served on three jurors before. One was --

15 THE COURT: Excuse my, Ms. XXXX, you did not  
16 mention what it is you like to read.

17 JUROR NO. 4: I read mainly histories,  
18 biographies, as well as industry magazines.

19 I'm in the health care IT industry. I have served  
20 on three juries before. Two were civil trials and in one we  
21 were dismissed before reaching a verdict. The second one we  
22 found for the defendant -- the plaintiff, excuse me. And  
23 then I have also served on one criminal jury where we found  
24 the individual guilty.

25 THE COURT: Ms. XXXX, let me back up. The first

1 trial, the one you were dismissed, did you actually hear the  
2 case?

3 JUROR NO. 4: Yes, we did. At the very end of the  
4 trial, after two weeks, when the judge was going to give us  
5 instructions, the attorneys and the judge decided to let the  
6 judge make the final determination. We were dismissed and  
7 did not deliberate.

8 THE COURT: What was the nature of the case?

9 JUROR NO. 4: It was insurance and it involved  
10 three parties, trucking type of situation.

11 THE COURT: The second case, the other civil case,  
12 what was the nature of that case?

13 JUROR NO. 5: It was two individuals suing each  
14 other and it was an assault case.

15 THE COURT: So personal injury?

16 JUROR NO. 4: Personal injury, yes. I'm sorry.

17 THE COURT: Your criminal case, what type of case  
18 was it?

19 JUROR NO. 4: It was an assault.

20 THE COURT: Your reaction to your three times of  
21 service?

22 JUROR NO. 4: Very positive.

23 THE COURT: All three?

24 JUROR NO. 4: All three, yes.

25 And I have not served in the military. I believe

1     that's all.

2                 THE COURT:  Anyone in the legal profession?

3                 JUROR NO. 4:  No.  No.

4                 THE COURT:  Thank you.

5                 JUROR NO. 5:  My name is XXXX XXXXXXXX.  I'm juror  
6     number five.  I've lived in Midvale since 2009.  I am  
7     currently employed by the Utah Department of National  
8     Resources, Division of Oil, Gas and Mining.  I'm currently  
9     divorced.  My former spouse is a registered nurse in  
10    Minnesota.  I have two children.  Both are adults.  My son,  
11    age 23, is a civil engineer in Salt Lake.  My daughter, 20,  
12    is a college student at Brigham Young University.  My  
13    highest level of education is a master's degree.  My college  
14    major was geology.  Hobbies and interests are maps, travel,  
15    history, walking.  I belong to the American Association of  
16    Petroleum Geologists.  I like to read Internet news,  
17    nonfiction books, primarily history, politics.  I have  
18    served as a juror on a previous jury trial.  It was a civil  
19    trial, in 1995, in Minnesota.  We did reach a verdict.  
20    Found in favor of the plaintiff.  My jury experience was  
21    positive.

22                THE COURT:  Mr. XXXXXXXX, what kind of a case was  
23    it?

24                JUROR NO. 5:  It's been a long time ago.  As I  
25    recall, it was a deal broker that thought he had been

1 cheated, and we found in his favor.

2 THE COURT: Mr. XXXXXXXX, it's possible that you  
3 have your hand over the receiver.

4 JUROR NO. 5: I don't know.

5 I do have a member of my immediate family. My  
6 younger brother is a lawyer for the State of Tennessee. I  
7 have not served in the military.

8 THE COURT: Thank you.

9 JUROR No. 6: My name is XXXXXXXX XXX XXXXXXXX. I'm  
10 juror number six. I've lived in Murray since 2001. I am  
11 currently a student at Salt Lake Community College. I'm  
12 single. I have two children. One in school. One is  
13 younger than school age. My highest level of education is  
14 high school, and I'm in college. My major will be physical  
15 therapy. My hobbies are running, swimming, family  
16 activities, dancing. I belong to my daughter's parent  
17 student association in her junior high. I volunteer for the  
18 softball team. And I assist with the Murray City Youth  
19 Chamber. I like to read newspaper articles, health  
20 magazines, family magazines. And 13 through 17 are no.

21 THE COURT: What is your current course of study?

22 JUROR No. 6: Physical therapy.

23 THE COURT: Thank you.

24 JUROR NO. 7: My name is XXXXXX XXXXXX. I'm juror  
25 number seven. I've lived in Magna, Utah since 2008. I am

1 currently employed by ARUP Laboratories. I am currently  
2 single. My spouse is employed at ITT. I have two children,  
3 one seven and one one year of age. My highest level of  
4 education is I've completed some college at Salt Lake  
5 Community. It was just general studies. My hobbies and  
6 interests are camping and painting. I don't belong to any  
7 organizations. I like to read romance, mystery and Better  
8 Homes and Gardens. I have not served as a juror in any  
9 previous trial. 14, 15 and 16, no. And I have never served  
10 in the U.S. military.

11 JUROR NO. 8: My name is XXXXXX XXXXXXX. I'm  
12 juror number eight. I've lived in Salt Lake City since  
13 August 2008. I am currently single. Currently employed by  
14 the Pointe Restaurant at HCI. I currently go to Salt Lake  
15 Community College.

16 THE COURT: What is your course of study?

17 JUROR NO. 8: General studies.

18 My hobbies and interests are running, working out,  
19 hiking, skiing. Do not belong to any clubs or  
20 organizations. I like to read magazines, Sports  
21 Illustrated, ESPN, economic magazines, also a variety of  
22 newspapers, the Salt Lake Tribune and my local newspaper  
23 back in Illinois. I have not served on a jury in previous  
24 trials. No to questions 14, 15, 16. I'm not in the United  
25 States military.

1 THE COURT: Thank you.

2 JUROR NO. 9: Hi. I'm XXXXXXXX XXXXXXXX. I am  
3 number nine, juror number nine. I've lived in Sandy, Utah  
4 since 1972. I am currently employed by Highland Cove  
5 Retirement Community. I am married. My husband is  
6 self-employed. He owns a lawn care business, for 30 years.  
7 We have four children. The first one is 42. She has a  
8 teaching degree, but right now she's a homemaker. My son is  
9 an obstetrician. My other son is an auditor for Workman's  
10 Comp. My other daughter is a hairstylist. I had some  
11 business college. My hobbies are camping, reading,  
12 traveling. I don't belong to any organizations. I like to  
13 read books and magazines, fiction and just family magazines.  
14 I have never served on a jury. I have no other -- I have  
15 not been in the military.

16 JUROR NO. 10: My name is XXXXXXXX XXXXXXXX. I'm  
17 juror number ten. I have lived in Toquerville, Utah, which  
18 is in Washington County, since 2006. I am currently  
19 employed with the Learning Center for Families. I am also a  
20 full-time student working on a master's degree in  
21 organizational performance. And my bachelor's degree is  
22 occupational therapy. I am currently married. I have two  
23 children, two years and three years old. Our third one is  
24 due in June. My hobbies include camping and woodworking. I  
25 am not a member of any specific clubs or organizations. I

1 love reading history and researching any topic that just  
2 comes to interest to me. And questions 13 through 17 are  
3 all no.

4 JUROR NO. 11: My name is XXXXXX XXXX. I'm juror  
5 number 11. I've lived in Ogden since '07. I am not  
6 currently employed. I am married. My husband is  
7 self-employed. He does irrigation and landscaping. I have  
8 no children, this month. My highest level of education is  
9 high school. My hobbies, I really like to do outdoor  
10 things, hiking. I like art a lot. I don't belong to any  
11 clubs or organizations. I like to read historical and  
12 nonfiction books. I don't really read any magazines. I've  
13 not served on a jury. I do have an uncle in California that  
14 works for Aetna Health Care, I think. He is a medical  
15 attorney.

16 THE COURT: As an attorney, however?

17 JUROR NO. 11: Yes. And I've never served in the  
18 military.

19 JUROR NO. 12: Ladies and gentlemen, I'm looking  
20 forward to serving on a jury without a problem. My name is  
21 XXXX XXXXXXXX. I'm juror number 12. I've lived in Draper  
22 since '02. I work for Varian Medical Systems. I am not a  
23 doctor, but I do -- I'm in manufacturing, engineer.  
24 Married. My wife is a teacher in the Granite school system.  
25 Four daughters, three sons, which makes seven children, and

1     ages are 43 to 38, but don't worry about it too much. I was  
2     married before and have a set of twins, so it all adds up.  
3     I have a college degree in engineering.

4             THE COURT: Mr. XXXXXXXX, you need to back up and  
5     give us the occupations of your adult children, please.

6             JUROR NO. 12: I meant to do that. Well, there  
7     are five engineers -- I'm pretty persuasive it seems -- a  
8     writer and a public relations.

9             Do you want them broken down?

10            THE COURT: I think that's all right. Thank you.

11            JUROR NO. 12: My hobbies are gardening,  
12     remodeling, exercise. My interest is to live to be 100.  
13     Working on it. I belong to a real estate investment group.  
14     I do read a variety of magazines for Newsweek, National  
15     Geographic, Reader's Digest, science news, invention,  
16     technology type things. I enjoy it. 13 through 17 is no.

17            JUROR NO. 13: My name is XXXXXXXX XXXXXX. I am  
18     juror number 13. I've lived in West Valley since 1991. I  
19     currently am employed by Verizon Wireless. Divorced. My  
20     ex-husband is employed by Magnuson Metals as a foreman. I  
21     have two children that are both still in school. My highest  
22     level of education is high school. My hobbies and interests  
23     are just spending time with my family and friends, reading.  
24     I don't belong to any organizations. I like to read  
25     inspirational books, self-help, personal growth, my kids'



1 homework. I have never served on a jury. 13 through 17 are  
2 actually no.

3 JUROR NO. 14: Good morning. My name is XXXXX  
4 XXXXXXX. I'm juror number 14. I've lived in Salt Lake City  
5 since 1996. I'm currently employed by Medical Group  
6 Insurance Services. I've been married ten years. My spouse  
7 is a former middle school teacher. She is now employed  
8 part-time by the Salt Lake City Catholic Newman Center as a  
9 music director. I do have two children, ages six and three,  
10 that keep us busy. I have a post-graduate degree and my  
11 undergraduate degree was a BFA, fine arts with advertising  
12 design. I have an MBA. Hobbies and interests, I enjoy  
13 music, drawing, painting, outdoor activities, camping and  
14 fishing, family activities such as that.

15 I do manage a local nonprofit group of juggling  
16 performers. An odd club to belong to, but it's interesting.  
17 Reading material, I have eclectic taste, but I do read the  
18 local newspapers, Salt Lake Tribune. Magazines are mostly  
19 trade magazines, Popular Science, Web development, Web  
20 design as part of my marketing communications employment. I  
21 try to jump between fiction and nonfiction reading material.  
22 As for questions 13 through 17, they are no, no previous  
23 jury experience, and I have not served in the military.

24 JUROR NO. 15: My name is XXXXXXXX XXXXXXXX. I'm  
25 juror number 15. I live in American Fork and have been

1     there since 2000. I currently am employed at Alpine School  
2     District as a paraprofessional aide in third grade. I am  
3     married. My husband is retired from the credit union  
4     business. We have three adult children. They are ages 40,  
5     retired teacher and now homemaker. A 34-year-old son who  
6     works in the food service and restaurant industry. A  
7     30-year-old daughter who graduated and is a homemaker as  
8     well -- graduated from college. My highest level of  
9     education is over three years of college. I majored in  
10    elementary education. I enjoy traveling, quilting, family  
11    fun, sewing. Currently remodeling our home and enjoying  
12    that mess. I don't belong to any extra clubs besides church  
13    memberships. I read magazines, National Geographic, Family  
14    Circle, Woman's Day, sewing and quilting magazines, church  
15    books, history biographies and gardening. I have served on  
16    a jury in approximately 2003. We did reach a jury verdict  
17    of guilty. It was a DUI.

18           THE COURT: Was the experience generally  
19    favorable?

20           JUROR NO. 15: It was, yes. Thank you.

21           My sister is a paralegal for Supervalu Company  
22    that just purchased Albertson's. She lives in Boise. And I  
23    have not served in the military, but my husband has.

24           THE COURT: Thank you.

25           JUROR NO. 16: My name is XXXX XXXXXX. I'm juror

1 number 16. I live in Centerville, Utah, and have since  
2 2005. I am currently employed by Bingham Engineering as a  
3 landscape architect. I am divorced. My spouse, I have no  
4 idea what she does, nor do I care. No children. My highest  
5 level of education, I've got a bachelor degree in landscape  
6 architecture from Utah State University. My hobbies are  
7 pretty much anything outside, golf, motorcycles, fishing,  
8 camping, waterskiing. I belong to a professional  
9 organization, American Society of Landscape Architects, the  
10 Western States Professional Motorcycle Hill Climbing  
11 Association, American Motorcycle Association.

12 Reading, I like to read adventure and suspense  
13 novels. And magazines, motorcycles, travel, and design  
14 magazines, but I mostly look at the pictures. I read  
15 professional and trade literature from design, planning and  
16 environmental issues. I have served on a jury. It was a  
17 federal criminal jury, I think in 2001. We did reach a  
18 verdict. It was a guilty verdict. My overall experience I  
19 feel was positive.

20 THE COURT: Mr. XXXXX, what was the offense? Do  
21 you remember?

22 JUROR NO. 16: It was a drug case.

23 THE COURT: Thank you.

24 JUROR NO. 16: I don't have any family members or  
25 close acquaintances that are in the legal field. And I've

1 never been in the military.

2 JUROR NO. 17: My name is XXXXX XXXXX. I'm juror  
3 number 17. I live in Kearns. I've lived there for five  
4 years. I've lived in Utah since 1982. I am currently  
5 employed by JB Hunt Transportation. I am married. My wife  
6 is a housewife. I have two young children, one that is in  
7 first grade and the other one is not old enough to go to  
8 school yet. I'm expecting another boy in September. My  
9 highest education is 12th. My hobbies and interests is  
10 model railroading, camping. I am a Park City coach in the  
11 Boy Scouts. I like to read Boys Life and other magazines of  
12 Boy Scouting, model railroading. I have not served as a  
13 juror. And 14 through 17 are all no.

14 JUROR NO. 18: My name is XXXXX XXXXXXXX. I'm  
15 juror number 18. I've lived in Sandy, Utah since 1978. I  
16 have sold construction equipment for 33 years, and I'm  
17 currently employed by Holland Equipment Company in Salt Lake  
18 City. I'm married, for 35 years. My wife is not employed.  
19 I have four adult children. My oldest son, 33, is a Web  
20 administrator. He works for PMI at Thanksgiving Point. My  
21 daughter is 31, she's a medical assistance. I have a son,  
22 29, who is a student at the University of Utah in the  
23 medical field. A son, 25, who is a lab tech at ARUP. I  
24 have a bachelor's degree from the University of Utah in  
25 business administration. My hobbies are flying, hunting and

1 shooting. I am a life member of the NRA. I am currently  
2 the president of the Utah General Aviation Association. I  
3 read the Deseret News every day and I read the scriptures  
4 every day. I also read hunting and flying magazines. I  
5 have not served as a juror. I do have a nephew, Sammy  
6 Meziani, who is a lawyer here in Salt Lake City. I do not  
7 know who he is employed by. And my bishop, Todd Hilbig, is  
8 a lawyer, and I do not know who he is employed by. I served  
9 in the Utah Army National Guard for eight years and achieved  
10 the rank of E-4.

11 JUROR NO. 19: My name is XXXXXX XXXX. I am juror  
12 number 19. I live in Alpine. We moved there in 2007 from  
13 Texas. Currently I'm just part-time employed by Westfield  
14 Elementary. I am married, for 31 years. My spouse is  
15 retired. I have four children, all married. My youngest  
16 daughter is 20, she is a dental assistant. A 23-year-old  
17 daughter who is a student. A 25-year-old son who is a  
18 student. A 28-year-old son who is a student. We're hoping  
19 to get them through. My highest level of education is some  
20 college in early childhood education. My hobbies are  
21 outdoors, hiking and skiing, that kind of thing. Only  
22 organizations are just church organizations. I like to read  
23 fiction books, entertainment magazines and church books. I  
24 have not served previously on a jury. And all 14 through 17  
25 are no.

1 JUROR NO. 20: My name is XXXXX XXXXXX. I'm juror  
2 number 20. I have lived in Pleasant Grove since 2008. I am  
3 currently employed by Semantic Corporation. I'm currently  
4 married. My spouse is a homemaker. I have two children  
5 under the age of five. My highest level of education is a  
6 bachelor's degree in communications, advertising, marketing.  
7 My hobbies are family activities, watching movies with my  
8 wife. I belong to no clubs or organizations. I like to  
9 read national and local newspapers, fiction novels and  
10 technology and science magazines. I have not served as a  
11 juror or served in the United States military.

12 JUROR NO. 21: My name is XXXX XXXXXX. I'm juror  
13 number 21. I live in Kearns, Utah. I've lived there since  
14 1993. I am currently employed by U.S. Magnesium as an  
15 independent contractor. I do IT consulting for them. I am  
16 currently married. My spouse is employed by ARUP  
17 Laboratories. I have two children. One is a student. The  
18 other one is 19, and he's in retail sales. He's also a  
19 student. My highest level of education is a bachelor's  
20 degree in information systems. My hobbies and interests are  
21 golfing, motorcycles, scuba diving, family, traveling,  
22 fishing. I don't belong to any clubs or organizations. I  
23 like to read computer magazines and scuba diving magazines.  
24 I read KSL daily. Answers 13 to 17 are no.

25 JUROR NO. 22: Good morning. My name is XXXXXXXX

1 XXXXXXXX. I'm juror 22. I have lived in Salt Lake City  
2 since 2001. I am currently a homemaker. I have been  
3 married for 25 years. My spouse is self-employed. He's an  
4 advertising director and writer. I have four children,  
5 three student age, school age children, and one at the  
6 University of Utah. My highest level of education is a  
7 college degree from the University of Utah. My major was --  
8 a double major in German and history with a teaching  
9 certificate. My hobbies include studying foreign languages,  
10 traveling, cooking, biking, cross-country skiing, gardening.  
11 I belong to the PTA in three different schools. And I like  
12 to read classical literature, Smithsonian magazine, National  
13 Geographic, Salt Lake Tribune, New York Times. I have never  
14 served as a juror. And I have not served in the military.

15 THE COURT: You have no attorneys who are close  
16 friends or immediate family members?

17 JUROR NO. 22: Well, how close a friend? We have  
18 a lot of friends that are attorneys, but not that we speak  
19 every day with about cases. But a long list of attorneys,  
20 but not really close friends. How's that?

21 JUROR NO. 23: My name is XXXXXX XXXXX XXXXXXXX.  
22 I'm juror number 23. I've lived in Mapleton since 2008. I  
23 am currently employed by a disability law firm. I'm  
24 currently married. My spouse takes care of our three  
25 children and works part-time at a pharmacy. I do have three

1 children. One is in preschool. The other two are younger  
2 than preschool age. My highest level of education is a  
3 bachelor's degree from Utah Valley University in paralegal  
4 studies from their school of business. My hobbies and  
5 interests are sports, snowboarding, basketball, fishing,  
6 hiking, camping. I do belong to the United Way organization  
7 in Utah County. I like to read most types of books,  
8 fiction, nonfiction. I read the Deseret News and the Daily  
9 Herald on a daily basis. And that's about it. I have not  
10 served as a juror in a previous jury trial.

11 My brother-in-law is an attorney. His name is  
12 Jere Reneer. He owns Reneer & Associates in Spanish Fork,  
13 Utah. My brother works for him and is in his third year of  
14 law school at the U of U right now. I do work on a really  
15 close basis with five attorneys in Utah. Our law firm is a  
16 nationwide law firm. We have 23 attorneys nationwide. We  
17 mainly do Social Security disability. And I have not been  
18 in the military.

19 THE COURT: Mr. XXXXXXXX, you are the office  
20 manager for the law firm that you work for; is that right?

21 JUROR NO. 23: I manage a department of 22  
22 paralegals. But then our law firm has about 130 employees,  
23 so I just manage the department of case managers.

24 THE COURT: Again, does the law firm work  
25 exclusively with Social Security disability or primarily?



1 JUROR NO. 23: Primarily Social Security  
2 disability. We do some Workers Compensation, personal  
3 injury. We've done some Phen-Phen cases, Vioxx cases, other  
4 types of cases like that. But probably 99 percent of what  
5 we do is disability law.

6 THE COURT: Thank you.

7 JUROR NO. 24: My name is XXXXXXXX XXXXXX. I'm  
8 juror number 24. I've lived in Midvale since 2009. I'm  
9 currently employed by Silverado Aspen Park Rehab. I am  
10 currently married. My spouse works for Maggie Sottero. We  
11 have no children. My highest level of education is a  
12 bachelor's degree in recreation therapy. My hobbies are  
13 camping, being outside and gardening. I don't belong to any  
14 clubs or organizations. I like to read fiction books, and  
15 particularly World War II fiction. 13 through 17 are no.

16 THE COURT: Your husband's employment?

17 JUROR NO. 24: Graphic designer for a bridle  
18 company.

19 THE COURT: Thank you.

20 JUROR NO. 25: My name is XXXXXXXX XXXXXX. I'm  
21 juror number 25. I've lived in the Kearns area since 1980.  
22 I'm currently employed by Wonder Bread and Hostess Cake as a  
23 safety director. I am currently married to the same  
24 wonderful woman for 35 plus years. My spouse is a  
25 homemaker. I have five children, three are adult age. A

1 35-year-old who is a distribution manager. A 27-year-old  
2 who is a maintenance worker for US Mag. And a 25-year-old  
3 who is an office worker. I have two small children that my  
4 wife and I adopted. One is age ten and one who is 13. My  
5 hobbies are woodworking, camping and spending time with my  
6 family. I do belong to the U.S. Army Reg Association. I  
7 like to read fictional books and biographies, and read the  
8 newspaper quite frequently. I have not served on any jury.  
9 I have spent time in the U.S. Army from 1973 to 1977 as an  
10 airborne ranger, and I was a sergeant.

11 THE COURT: Mr. XXXXX, any associations with  
12 attorneys, close personal friends or members of your  
13 immediate family?

14 JUROR NO. 25: No, Your Honor.

15 THE COURT: Thank you.

16 JUROR NO. 26: I am XXXXXXXXXX XXXXXXXX. I'm juror  
17 number 26. I live in West Valley City and have been there  
18 since 1977. I am currently retired, but I also work as a  
19 substitute teacher for the Granite School District. I am  
20 married, for 49 years. My husband is retired. He mostly  
21 worked in computers. He spent 20 years with Intermountain  
22 Healthcare. I have seven living children, adult children.  
23 My oldest son, 48, works for Onyx Graphics, mostly in  
24 computer areas. My oldest daughter is 44. She works for  
25 data entry at the United States Post Office. My next

1 daughter, 43, works for Roy School District. Next daughter,  
2 42, works for Granite School District. My next son works --  
3 he's a contractor, but currently is selling construction  
4 materials and such to contractors. My son, 34, is a  
5 software writer and a student. He works for Online writing  
6 software. My youngest daughter, 33, is a representative for  
7 a health care insurance company, Altius.

8 My highest level of education is some college. I  
9 was majoring in elementary education. My hobbies are mostly  
10 my grandchildren. I also enjoy music and camping. I belong  
11 to no outside organizations, other than my church groups. I  
12 like to read church books, magazines. I try to keep current  
13 on the fiction that my grandchildren are reading so I can  
14 have something to talk with them about. I do frequently  
15 read through -- browse through the Deseret News. I have not  
16 served on a jury. 14 through 16 are no. I have not served  
17 in the military, but my husband spent several years with the  
18 Marine Corps.

19 JUROR NO. 27: My name is XXXX XXXXXXXX. I'm juror  
20 number 27. I've lived in Kearns, Utah since 1988. I'm  
21 currently employed by Senske Lawn and Tree Care as a lawn  
22 applicator. I am currently attending school at the  
23 University of Utah. I'm single with no children. My  
24 highest level of education is some college. I'm studying  
25 business administration. My hobbies are sports, political

1 science and camping. Mostly I read political science books  
2 and history. I have not served on a jury in a previous  
3 trial. And 13 through 17 are all no.

4 JUROR NO. 28: My name is XXXXX XXXXXXX. I'm  
5 juror 28. I've lived in West Jordan since 2007. I'm  
6 currently employed by the University of Utah. I am  
7 currently married. My spouse is a --

8 THE COURT: Mr. XXXXXXX, what do you do for the  
9 university?

10 JUROR NO. 28: I am a professor slash researcher  
11 in the department of pharmaceuticals.

12 THE COURT: Thank you.

13 JUROR NO. 28: My spouse is employed -- well,  
14 she's a homemaker. I have one child under the age of four.  
15 My highest level of education is a Ph.D. My major in  
16 college was biology. And my major for the Ph.D was  
17 biomedical science. My hobbies and interests are football,  
18 movies, music. I belong to the Controlled Relief Society,  
19 the American Society of Gene Therapy, and the American  
20 Association of Pharmaceutical Scientists. I like to read  
21 Southern Living and Parenting, other cooking books. And for  
22 13 through 17, no.

23 JUROR NO. 29: My name is XXXXXXX XXXXXXX. I am  
24 juror number 29. I've lived in Salt Lake since 2007. I  
25 currently work for Overstock.com. I am married. My husband

1 did work for the Salt Lake School District, but he now works  
2 for Delta. He was a coach for West High School basketball.  
3 I have three kids. One that is in kindergarten, the other  
4 two are two and three. I am expecting my fourth in  
5 September. I have some college in business administration,  
6 I didn't finish, but I am licensed as a mortgage broker in  
7 Florida. And when I go back, I'm going to try and get my  
8 license in real estate. My hobbies include shopping,  
9 dancing, being with my friends and family, traveling,  
10 surfing the Internet. I belong just to the PTA at my  
11 daughter's school. I like to read Salt Lake Tribune and  
12 then our local newspaper at home, which is the Branston  
13 Herald. And also entertainment magazines, and another  
14 magazines at home called Gotcha. I've never served as a  
15 juror. My uncle is an attorney here in Salt Lake.

16 THE COURT: What kind of law does he practice.

17 JUROR NO. 29: I'm really not sure. He does a lot  
18 of things for the Polynesian culture.

19 I have never served in the military.

20 JUROR NO. 30: My name is XXXXX XXXXXXXX. I'm  
21 juror number 30. I've lived in Draper for over a year.  
22 Lived in the Salt Lake valley my whole life. I'm currently  
23 employed by Cottonwood Ortho Labs where I'm an orthodontic  
24 lab technician. I'm married. My wife is a homemaker, and  
25 she's going to be going to school for culinary arts pretty

1 soon. I have two kids, both under four. One is almost two.  
2 One is almost four. I studied welding at Salt Lake  
3 Community College for a while, but didn't go into welding.  
4 My hobbies include art, including wire sculpture and  
5 drawing. Then also music. I play drums in a couple of  
6 bands. Spending time with my kids. I don't belong to any  
7 organizations or clubs. I like to read books. My kids make  
8 sure I don't have enough time to read magazines. Most of  
9 the books I like are classic literature like Dante's Inferno  
10 and Treasure Island, stuff like that. Most of these people  
11 are long deceased. The questions 13 through 17 are no. And  
12 I don't know any lawyers.

13 JUROR NO. 21: My name is XXXXX XXX. I am juror  
14 number 31. I've lived in West Jordan since 1991. I am not  
15 employed, but I am a student at Salt Lake Community College.  
16 I'm currently single. My highest level of education is some  
17 college. I'm doing my generals.

18 THE COURT: Do you have a major, Mr. XXX?

19 JUROR NO. 21: No.

20 My hobbies are snowboarding and mostly sports. I  
21 do not belong to any clubs or organizations. I like to read  
22 mostly fiction books, mostly zombie books. And 13 through  
23 17 are no.

24 JUROR NO. 32: My name is XXXXXXXX XXXXXXXX. I'm  
25 juror 32. I've lived in Riverton since 1996. I am

1 currently employed with Electrical Consultants, Inc. I am  
2 currently single. My highest level of education is some  
3 college. My hobbies and interests are hunting, fishing and  
4 camping. I don't belong to any clubs or organizations. I  
5 like to read hunting and fishing magazines. And 13 through  
6 17 are all no.

7 JUROR NO. 33: My name is XXXXXXXX XXXXXXXX. I'm  
8 juror number 33. I've lived in Kearns, Utah since 2001. I  
9 am a retired truck driver. I'm currently divorced. I have  
10 no contact with my former spouse. I have no children. I  
11 have some college, just general education. My hobbies and  
12 interests are sports, football. I enjoy camping and  
13 fishing. I don't belong to any clubs or organizations. I  
14 like to read magazines on health and nutrition. I like  
15 Men's Health and Men's Fitness. I've not served as a juror.  
16 I've served in the Air Force, 1975. Rank Airman First  
17 Class.

18 JUROR NO. 34: My name is XXXXXXXXXX XXXXX. I'm  
19 juror number 34. I've lived in Salt Lake City since 1998.  
20 I grew up in Vermont. I am self-employed. I'm a sales rep  
21 for various outdoor and bicycle companies. I travel over  
22 Utah, Idaho and Wyoming. I'm single with no children. I  
23 received my bachelor's degree from the University of Utah in  
24 Spanish and business. My hobbies are mountain bike racing,  
25 snowboarding and skiing. I guess the organization that I

1 belong to would be the Cannondale Factory Mountain Bike Race  
2 Team. I race professionally for them. I like to read a  
3 wide variety of books, local newspapers, cycling  
4 publications, outdoor magazines. Let's see, 13 through 17  
5 are all no. I do have two personal friends who are  
6 attorneys, Jared Inouye and John Scofield, both live in Salt  
7 Lake.

8 THE COURT: Do you know what kind of law they  
9 practice?

10 JUROR NO. 34: That's a good question. I think  
11 John does mostly corporate stuff. And Jared, he does a wide  
12 variety. He works with a firm, but he does a wide variety  
13 of stuff.

14 JUROR NO. 35: My name is XXXXXX XXXXXX. I live  
15 in Holladay, Utah and have been there since 1992. I am  
16 currently employed with an insurance company called Civil  
17 Service Employees Group, but we are not affiliated with the  
18 government. I am divorced. My ex-husband retired from  
19 private practice in the business industry. I have one son.  
20 He is a computer programmer, computer analyst. He lives in  
21 Castle Rock, Colorado. My education is some college. And I  
22 was majoring in business. My hobbies are cooking and  
23 interior decorating and gardening. I really like fashion  
24 designing. The books I like are nonfiction and fiction, and  
25 also religious. I have never served on a jury. I do know



1 some lawyers. My brother-in-law is a lawyer in Colorado  
2 Springs. However, he just recently retired and his two sons  
3 took over his private practice. I have never been in the  
4 military. I've never served on a jury.

5 JUROR NO. 36: My name is XXXX XXXXXX. I'm juror  
6 number 36. I've lived in Salt Lake City since 1983. I am  
7 currently employed by PPG Industries. I sell paint and  
8 coatings to major contractors here in the Wasatch Front. I  
9 am currently married. My spouse is employed by the LDS  
10 Church. She's a secretary for the welfare services  
11 department. I have seven children that are adults. A set  
12 of twins that are 36, both homemakers, girls. A daughter,  
13 35, that's a hairstylist. A son, 34, that's in construction  
14 in Phoenix. I have a daughter, 33, that is a secretary,  
15 accounts payable for a country club in Phoenix. I have a  
16 son, 25, that graduated from the University of Utah. He is  
17 now working for Chevron in finance in Kemmerer, Wyoming. I  
18 have a daughter, 24, that is a secretary for a doctor.

19 My highest degree of education is high school. I  
20 love sports of all kinds, especially football, old cars,  
21 music and fishing. I belong to the PDCA, which is a painter  
22 decorators council. I like to read magazines, mostly Motor  
23 Trend. I have served as a juror in 2004. We did reach a  
24 verdict. The verdict was guilty. It was a bank -- two bank  
25 robberies, and both defendants were guilty. And I had a

1 very positive experience. I do know a lawyer. My  
2 son-in-law, Michael Huber, has his own firm, and he mostly  
3 does class action. I have not served in the military.

4 THE COURT: Do you know what kind of class action  
5 lawsuits he handles?

6 JUROR NO. 36: Some in mortgage and then he does  
7 all other kinds of law also, but I know that's been some of  
8 his bigger stuff.

9 THE COURT: Thank you.

10 JUROR NO. 37: My name is XXXXX XXXXXXX. I'm  
11 juror number 37. I've lived in Salt Lake since 1990. I am  
12 a homemaker. I am married. My husband works for Connexus,  
13 an IT company. Three children, adults. Daughter, age 29,  
14 is a manager of a team of computer programmers. 34, she's a  
15 homemaker. And 36, self-employed wedding and events  
16 planner. My highest level of education is a few years of  
17 college, general studies. I like to garden. I like  
18 exercise. I like to read. No organizations, memberships.  
19 I read the paper, Tribune, daily, Newsweek magazine,  
20 fiction. 13 through 17, answers to all are no.

21 JUROR NO. 38: My name is XXXXX XXXXX. I'm juror  
22 number 38. I currently live in Holladay. I have been in  
23 the Salt Lake valley since 2001. I am currently employed by  
24 Gold's Gym as a fitness manager, and also attending the  
25 University of Utah full-time. I am single. And my highest

1 level of education, I'm a junior currently. I'm in exercise  
2 and sports science, and also pedagogy, my major. I like  
3 anything that involves activity, weightlifting, dancing, the  
4 outdoors, sports. I enjoy spending time with my nieces and  
5 nephews that I have up here. I read a lot of stuff for  
6 school in the exercise, sports science field, health and  
7 fitness journals, as well as anything sports related. ESPN  
8 on line. It's no to the rest of those. I haven't served in  
9 the military or a jury before.

10 JUROR NO. 39: My name is XXXX XXXXXXXX. I'm juror  
11 number 39. I've lived in Salt Lake City since 1986. I am a  
12 career federal employee with the Bureau of Land Management.  
13 I have 30 years of service. I'm currently single. I have  
14 no spouse. I have no children. I have a college degree,  
15 bachelor of science in forestry and wildlife from Virginia  
16 Tech. My hobbies are hunting, target shooting, and personal  
17 fitness. I'm a life member of Safari Club International and  
18 the National Rifle Association. I read primarily hunting  
19 magazines, a variety of them. I have no previous experience  
20 as a juror. I do have a family member, my older brother is  
21 a senior partner in a law firm in Pennsylvania. It's kind  
22 of a general practice. And I do not have any military  
23 experience.

24 JUROR NO. 40: My name is XXX XXXXXXXX. Juror  
25 number 40. I reside in Morgan, Utah. I've lived there

1 since 1976. I'm currently employed and have been for the  
2 past 40 years in the title insurance industry, the past 20  
3 with Mountain View Title and Escrow company in Morgan. I am  
4 married, 42 years. My spouse is retired as a civil servant  
5 at Hill Air Force Base as a branch secretary. I have two  
6 children, 34 and 32. My 34-year-old son is in car sales.  
7 My 32-year-old son is an appraiser and a title officer in  
8 the title industry. I have a bachelor's degree in computer  
9 science. And my hobbies are gardening, hunting, fishing. I  
10 am a member of the Utah Land Title Association. I read the  
11 newspaper, sports, magazines, National Geographic. And the  
12 answers to 13 through 17 are no. I have no one that I'm  
13 close to that's in the law profession.

14 JUROR NO. 41: My name is XXXXXX XXXXXXXX. I'm  
15 juror number 41. I've lived in Taylorsville, Utah since  
16 1991. Though I'm currently unemployed, my main focus has  
17 been computer programming and electronics. I'm currently  
18 single and have no children. My highest level of education  
19 is some college with mainly a focus on electronic  
20 engineering and computer science. My hobbies and interests  
21 include stain glass work, programming construction and  
22 electronics. I mainly read technical manuals and news  
23 articles. For 13 through 17, the answer is no.

24 JUROR NO. 42: My name is XXXXXX XXXXXX. I am  
25 number 42. I've lived in Farmington since '04. Currently

1     retired. Currently divorced. Again, don't know where he  
2     is. Ditto, don't care. No children. Master's degree in  
3     physical education.

4                 THE COURT: Ms. XXXXX, you indicated you were  
5     retired. What did you do before you retired? What are you  
6     retired from?

7                 JUROR NO. 42: From the Davis School District. I  
8     taught for 24 years, and then I was in administration for  
9     nine.

10                THE COURT: All right. Thank you.

11                JUROR NO. 42: Historical novels I like. Not  
12     served as a juror. And no to the rest.

13                JUROR NO. 43: Hi. I'm XXXXXXXX XXXXXXXX. I'm  
14     juror number 43. I have lived in Washington Terrace since  
15     2005. I am employed with Intermountain Health Care. I'm  
16     single. I have a daughter. She's two. My highest level of  
17     education, some college. I'm working towards a fashion  
18     design and marketing major. My hobbies include football --  
19     Go Saints. And hobbies, being a mom, music, fashion,  
20     movies, potty training. I like to read everything, mainly  
21     magazines -- I'm really nervous -- and Standard Examiner. I  
22     have not served as a juror. 14, 15, 16 and 17, no.

23                THE COURT: Ms. XXXXXXXX, what kind of magazines do  
24     you like to read?

25                JUROR NO. 43: Fashion, like Okay, US Weekly.

1 Anything to do with somebody else's life.

2 THE COURT: Thank you. That's a very good answer.

3 JUROR NO. 44: Hi. My name is XXXXX XXXXX. I'm  
4 juror number 44. I've lived in Orem since 2009. I'm  
5 currently employed at Alpine School District as a junior  
6 high teacher. I'm married. My husband is currently going  
7 to BYU full-time. We have no children. My highest level of  
8 education is a bachelor's degree in math education with a  
9 minor in chemistry education. My hobbies are reading,  
10 quilting, watching movies, taking a break from school. I  
11 belong to the Utah Education Association. That's for  
12 teachers. I like to read fiction. I've not served as a  
13 juror. My brother-in-law is a lawyer. His name is Daniel  
14 Brough. I'm going to butcher the name of his firm, but I  
15 think it's Bennett Tueller Johnson & Deere, something like  
16 that. It's here in Salt Lake.

17 THE COURT: Do you know what kind of law he  
18 practices?

19 JUROR NO. 44: I think it's civil, but he doesn't  
20 usually talk to us very much about his cases.

21 And I've never served in the military.

22 THE COURT: Thank you.

23 JUROR 45: My name is XXXXXXX XXXXXXX. I've lived  
24 in Springville since 1950. I work as a school crossing  
25 guard for Mapleton City elementary schools. Before that I

1 worked as a receptionist for a printing company. My husband  
2 works for Tour Ice as a sales delivery person. I have no  
3 children. My highest education is high school. I enjoy  
4 embroidering, reading, going to plays, the symphony. I  
5 don't belong to any organizations. I enjoy all kinds of  
6 books and magazines. I served as a juror in 1983. The  
7 judge threw the case out before it got to the jury.

8 THE COURT: What kind of case was it?

9 JUROR No. 45: It was receiving stolen goods.

10 JUROR NO. 46: My name is XXXXXXXX XXXXXXXXXXXX.  
11 I'm juror number 46.

12 THE COURT: Mr. XXXXXXXXXXXX, could you wait a  
13 second.

14 Could we see why the microphone is not working.

15 Mr. XXXXXXXXXXXX, I'm going to ask you to go ahead.  
16 I'll ask you to speak really loudly, okay.

17 JUROR NO. 46: Sounds good.

18 My name is XXXXXXXX XXXXXXXXXXXX. I'm juror number  
19 46. I've lived in Midvale, Utah since 2009. I'm currently  
20 employed by the BYU political science department as a  
21 research assistant. I am currently attending Brigham Young  
22 University. I'm currently single. No children. My highest  
23 level of education is some college. My major is  
24 international relations. My hobbies and interests are  
25 international politics. I study a lot about international

1 economic development. I enjoy distance running. I belong  
2 to BUY Chapters of Students for International Development,  
3 the International Honors Society for Students, Political  
4 Science Honors Society, and Phi Kappa Phi, which is another  
5 student honor society. I like to read political blogs,  
6 newspapers, current events magazines and newspapers. And  
7 the answers to 13 through 17 are no.

8 JUROR NO. 47: My name is XXXXX XXXX. I am juror  
9 number 47. I've lived in Sandy since 1972. I am currently  
10 employed by the U.S. Postal Service. I'm currently married  
11 to the same woman for 40 years. She's a saint. My spouse  
12 is employed by the LDS Church as a secretary for the church  
13 education system. I have four sons. One, age 36, who is an  
14 investment counselor. One who is 33, property management.  
15 And I have one who is 30, is a manager of a company down in  
16 Orem. I have one son, 26, who is a cabinetmaker and is  
17 going to Salt Lake City Community College to get his  
18 commercial pilot's license. None of them live at home. So  
19 that is nice.

20 My highest level of education, I attended school  
21 at Salt Lake Technical College and majored in electricity.  
22 My hobbies and interests are any outdoor activities. I love  
23 spending time at Bear Lake with my grandchildren. I belong  
24 to the Disabled Veterans Association and Order of the Purple  
25 Heart. I like to read history magazines, fiction, history



1 books and trade magazines. I was called to be a juror about  
2 two months. It was for the county, but was not picked as a  
3 juror. And I served in the military for two years, in the  
4 Army, and reached the rank of E-4.

5 JUROR NO. 48: My name is XXXXXX XXXXXX. I live  
6 in Levan, Utah. However, I have spent quite a bit of time  
7 in Salt Lake. I moved to Levan to help take care of my  
8 mother, who is now deceased. I am employed by Lowes here in  
9 Salt Lake City. I also work at Walker's convenience store.  
10 I do hair -- volunteer hair work for Taylorsville Senior  
11 Citizens Center. I am currently divorced. My ex-husband is  
12 retired from Kennecott. I had three children. I have two  
13 living boys, both in the construction end of it, who are now  
14 unemployed. My daughter died.

15 I have a high school diploma, and I continued on  
16 to beauty school. My hobbies are crafts. I love yard work,  
17 camping, and I love those cruises. I belong to the  
18 following clubs or organizations. The only one I have is I  
19 have been president of a beautification committee in Levan,  
20 Utah. I do very little reading because I do not have the  
21 time, but when I do, I read crafts and cookbook magazines.  
22 I have been called for jury duty in Juab County for six  
23 months in 2008. I went three times for jury duty. It was  
24 settled outside the courtroom all three times. I then asked  
25 the judge to please be dismissed because all three cases

1     were drug related, and I lost my daughter because of drugs.  
2     I have not served in the military. And I do not know  
3     anybody in a law firm.

4             JUROR NO. 49: My name is XXXXX XXXXXX. I'm juror  
5     number 49. I have lived in Mount Pleasant, Utah for the  
6     last ten years. I am currently employed part-time by IHC.  
7     I'm also self-employed. I have a tree farm. I am currently  
8     married to my sweet wife, 21 years. She is employed by  
9     Wasatch Academy. She is an ESL teacher, English as a second  
10    language. I have four children, ages ten to 16. I have a  
11    bachelor's degree from Utah State University in political  
12    economy. My hobbies are growing trees, riding motorcycles,  
13    and studying foreign languages. I do not belong to any  
14    clubs or organizations. I don't read a lot, at least on a  
15    regular basis, unless it's a language book. And the answers  
16    to 13 through 17 are also no.

17            JUROR NO. 50: My name is XXXXX XXXXXX. I am juror  
18    number 50. I have lived in Herriman since 2000 -- 2002. I  
19    am currently a project manager for Garbett Homes. I am  
20    married. My spouse stays home with the children, which I  
21    have three girls, ages four, two and three months. I have  
22    some college education, all general studies. My hobbies are  
23    building, yard work, outdoor activities and hunting. I do  
24    not belong to any clubs or organizations. I read newspapers  
25    on occasion, both local papers. I served as a juror in

1 2000. We did reach a verdict, guilty for the defendant. It  
2 was a domestic dispute, criminal trespass. I do not have  
3 any immediate family that is in the legal profession. I  
4 have not served in the military.

5 THE COURT: Your service on the jury, was it  
6 generally favorable or negative?

7 JUROR NO. 50: Favorable.

8 THE COURT: Thank you.

9 JUROR NO. 51: My name is XXXX XXXXXXXX. I am  
10 juror number 51. I've lived in Salt Lake for -- actually, I  
11 can't quite figure out if I'm Salt Lake or Holladay because  
12 it's Salt Lake, but they call it Holladay. So, anyway, I've  
13 lived in the Salt Lake area for about 42 years. I am  
14 currently employed by Canyon School District. I am  
15 separated from my husband. He worked for the state office  
16 of education as the state director of transportation over  
17 school buses throughout the state. I have five kids. Two  
18 of them are -- two oldest children are my husband's from a  
19 previous marriage, so I have three of my own. One is 30,  
20 and she lives in Missouri. She's a housewife. One is 27,  
21 and she lives in Herriman. She's a housewife. And one is  
22 24, and she is a housewife. She lives next door to me.

23 My highest education is high school. My hobbies  
24 and interests are making bread and spending time with my  
25 grandchildren. I have a little grandson that lives next

1 door to me that will say, grandma, you forgot something,  
2 make bread. So it's one of my favorite things to do. I  
3 have also lately tried my hands at croqueting. I don't  
4 belong to any clubs or organizations. I like to read  
5 religious and self-help books. I have not served on a juror  
6 before. And number 16, my brother-in-law is a retired  
7 attorney. He worked in Las Vegas. Then he was the county  
8 attorney for Emery County. He moved back to St. Louis and  
9 he worked for McDonnell Douglas.

10 JUROR NO. 52: My name is XXXXXXXX XXXX. I'm juror  
11 number 52. I've lived in Ogden City since 1988, 22 months  
12 of which I resided in St. Petersburg, Russia. I am  
13 currently employed by Higher Quality Jewelry, but consider  
14 myself a professional woodturner. I attend Weber State  
15 University full-time. I am currently single. No children.  
16 My highest level of education is some college. I have a  
17 two-year degree. My major is bachelor's of integrated  
18 studies. My hobbies and interests are woodturning. I enjoy  
19 learning and translating, and anything outdoors. I belong  
20 to the Utah Association of Woodturners, the American  
21 Association of Woodturners, and I'm an assistant coach for  
22 Highland Junior High in Ogden. I have not served as a  
23 juror, but I think it would be a good experience. I've  
24 never served in the military.

25 THE COURT: Thank you.

1           Ladies and gentlemen, all of you, thank you very  
2 much. Why don't you all stand up and stretch your legs,  
3 because we're not nearly done.

4           If it seems warm to you in here, I want to  
5 apologize. I don't think this courtroom has had quite this  
6 number of bodies in here at any one time before.

7           All right. If we could get started, again, then,  
8 please.

9           Ladies and gentlemen, I'm now going to ask you a  
10 number of questions. In the law this is referred to as the  
11 voir dire, which in Latin means to speak the truth. The  
12 purpose of these questions is to first help me discern or  
13 determine whether or not there are any of you who ought to  
14 be excused from service on the jury because of bias or  
15 prejudice.

16           Also, and equally as important, it is an  
17 opportunity for the attorneys in this case to make educated  
18 decisions about what are known as preemptory strikes,  
19 meaning they have the opportunity to strike or to exclude  
20 some of you from services on this jury for reasons they do  
21 not have to give. All of us will be listening very  
22 carefully to the answers you give to the questions that are  
23 asked. I want you to remember again the oath you took at  
24 the very beginning obligated you, by oath, to answer the  
25 questions truthfully.

1           I mentioned to you at the outset that it is  
2   expected that it will take three weeks, 15 trial days, for  
3   the parties in this case to present evidence. Thereafter,  
4   the jury will deliberate for whatever period of time it  
5   takes for the jury to reach a unanimous verdict. Does this  
6   present a special problem for any of you? If so, would you  
7   please stand.

8           Let's begin with the lowest number juror. If you  
9   would please give us your juror number and then explain to  
10   the Court what your problem would be.

11           JUROR NO. 2: I'm juror number 2. I am a  
12   full-time student Monday through Thursday. I start school  
13   at noon.

14           THE COURT: How many classes would you miss if you  
15   were to be done by 1:30 each day?

16           JUROR NO. 2: One.

17           THE COURT: Would you miss -- is it a five-hour  
18   class, a three-hour class?

19           JUROR NO. 2: Two-hour class on Mondays and  
20   Wednesdays.

21           THE COURT: Do you think you could make it up in  
22   some other way?

23           JUROR NO. 2: Possibly, if I needed to. I could  
24   talk to my teacher.

25           THE COURT: What is the class?

1 JUROR NO. 2: Sociology.

2 THE COURT: All right. Thank you, Ms. XXXX.

3 JUROR NO. 10: I'm juror number ten. A three-week  
4 trial would be difficult for me because it would be an  
5 unpaid leave from work, which would roughly be somewhere  
6 between two, and two and a half weeks of unpaid work. For  
7 me, at the current time, would be a hardship, as well as the  
8 fact that I have responsibilities which are tied to my  
9 specific certification as an occupational therapist  
10 providing services to children with disabilities in which I  
11 have to provide evaluations which help determine services,  
12 and there are very strict time lines in which those are  
13 involved with. I am currently the only occupational  
14 therapist with the company.

15 THE COURT: Mr. XXXXXX, you have been told you  
16 will be done at 1:30 each day. Would you be able to make up  
17 for that missed time in the morning if you were required to?

18 JUROR NO. 10: No, because I work in Washington  
19 County, the St. George area. The distance would be not  
20 allow me that.

21 THE COURT: Thank you.

22 Ms. XXXX.

23 JUROR NO. 11: Juror number 11. I am eight months  
24 pregnant, and in three weeks I don't want to go into labor  
25 in the courtroom. I have doctors appointments once a week.

1 And I live in Ogden, so the drive itself is kind of hard.  
2 Since I don't really fit behind the steering wheel, my  
3 husband has to take me.

4 THE COURT: Thank you, Ms. XXXX.

5 JUROR NO. 15: Juror number 15. I work in the  
6 school district on contract employment. I do an ESL program  
7 in the mornings from nine to eleven where I am the only one  
8 who does this computer program for children.

9 THE COURT: No one who could take your place  
10 during this period of time, if necessary?

11 JUROR NO. 15: Possibly, but it's been my  
12 responsibility. My husband is retired after a layoff, and  
13 my unemployment would be cut.

14 THE COURT: You are a contract employee, meaning  
15 you are paid by the hour, so the hours you would miss?

16 JUROR NO. 15: If I'm not there, I am not paid.

17 THE COURT: Could you do your work in the  
18 afternoon?

19 JUROR NO. 15: No, not that particular part.

20 THE COURT: Thank you, Ms. XXXXXXXXXX.

21 JUROR NO. 17: Juror 17. Missing three weeks of  
22 work -- I am head of the household. It would be unpaid. As  
23 of right now, I'm uninsured. If I could make up my work in  
24 the afternoon, I'm not sure.

25 THE COURT: Are you a long haul driver, Mr. XXXXX,



1 or is it local?

2 JUROR NO. 17: Local.

3 THE COURT: Is it possible that you could make it  
4 up in the afternoon if you had to?

5 JUROR NO. 17: At this point in time, I'm not  
6 sure. I could find out as soon as I talk to my employer.

7 THE COURT: Thank you, Mr. XXXXX.

8 JUROR NO. 18: I'm juror number 18. I work in the  
9 construction industry. As everybody knows, the current  
10 recession has hit our industry extremely hard. We're both  
11 hanging on by the skin of our teeth. I'm a commissioned  
12 salesman, and three weeks out of my job would be financially  
13 devastating.

14 THE COURT: Again, you could not make it up in the  
15 afternoons or evenings?

16 JUROR NO. 18: No. I work mainly in Utah County,  
17 and getting from here to there to perform my job functions  
18 would be pretty much impossible.

19 THE COURT: All right. Thank you.

20 JUROR NO. 21: XXXX XXXXXX. I'm juror 21. I am  
21 contracted and paid hourly. So, again, if I'm not there, I  
22 am not paid. It's not something I could make up outside of  
23 business hours.

24 THE COURT: Mr. XXXXXX, again, we will be done  
25 every afternoon. You say there if no way you could make it

1 up?

2 JUROR NO. 21: We close at 3:30. I could make up  
3 a little bit of it, I guess.

4 THE COURT: All right. Thank you.

5 JUROR NO. 30: I'm juror number 30. I work for a  
6 very small lab with six people. Even now they're already  
7 having a heart attack. I am also the sole breadwinner of  
8 the house, and missing that much work, you know, my wife and  
9 two kids, would be a devastated blow. Our work is on a  
10 tight time schedule. Everything has to be out to UPS by  
11 three o'clock, and that's about it.

12 THE COURT: Again, with the timetable of three  
13 o'clock, there is no way that can be extended, there is no  
14 way you could be -- for this trial, you could perhaps do the  
15 work and have a later time table?

16 JUROR NO. 30: We're on a very, very tight  
17 timetable. It's very strick. We have to do so many units  
18 per hour to get our quotas every day. It's really --

19 THE COURT: Thank you.

20 Mr. XXX.

21 JUROR NO. 31: XXXXX XXX. I'm juror 31. I attend  
22 class at Salt Lake City Community College from eight o'clock  
23 to one o'clock every day, Monday through Friday. It would  
24 be very difficult to make up those classes.

25 THE COURT: All right. Thank you, Mr. XXX.

1 JUROR NO. 34: XXXXXXXXXX XXXXX, juror 34. I am a  
2 traveling sales rep. I have to be on the road a lot for  
3 work. I have scheduled this week a sales meeting in  
4 California on the 22nd.

5 THE COURT: Where are your trips scheduled for  
6 this week and next?

7 JUROR NO. 34: I go to Moab, St. George, and then  
8 I will be in Laguna Beach, California the 22nd.

9 THE COURT: There is no one that can go in your  
10 stead or cover for you?

11 JUROR NO. 34: I work in an agency with three  
12 people, and we all have a pretty full plate.

13 THE COURT: All right. Thank you.

14 MS. XXXXXX.

15 JUROR NO. 35: I am juror number 35. I'm  
16 extremely busy. We're very short of help. If I was called  
17 to be a juror for three weeks, I could probably do some  
18 rescheduling. I do a lot of underwriting the policies and  
19 the work has to be done very current. We can't let it sit.  
20 These people are waiting for policies.

21 THE COURT: Ms. XXXXXX, if we were to ask you to  
22 serve, would you be able to do what you need to do in the  
23 afternoons and evenings?

24 JUROR NO. 35: I think I would have to get an okay  
25 from my supervisor.

1                   THE COURT: But you think you could do that, if  
2   necessary?

3                   JUROR NO. 35: If that's what it had to be to  
4   follow the law, yes. But I still have to get the okay from  
5   my company.

6                   THE COURT: All right. Thank you.  
7                   Mr. XXXXXX.

8                   JUROR NO. 36: Yes. I am also in commission  
9   sales. I possibly could take care of that after 1:30. My  
10   mother was just hauled in, my sister took her into the  
11   emergency room in St. George. I don't know how that's going  
12   to affect her, but my sister can't take off. She's going to  
13   e-mail me to tell me if I needed to come down or not. And I  
14   also have a vacation planned for next week. I could  
15   reschedule that.

16                  THE COURT: You could reschedule, if necessary?

17                  JUROR NO. 36: Yeah.

18                  THE COURT: If there is nothing urgent about being  
19   with your mother, you think you could serve?

20                  JUROR NO. 36: I think, yeah, I could.

21                  THE COURT: Thank you. Mr. XXXXXX, is this  
22   something that you could check on during our first break to  
23   ascertain?

24                  JUROR NO. 36: If I could get to my phone, yes, I  
25   could call my sister and see what is going on.

1 THE COURT: We'll have Ms. Malley make certain you  
2 get access to your phone.

3 JUROR NO. 36: Okay.

4 THE COURT: Thank you.

5 JUROR NO. 38: I'm juror number 38. I have a test  
6 tomorrow in one of my classes, one on Thursday. They are  
7 midterms. I have a class Tuesdays and Thursdays from 10:30  
8 to 1:45 for the next two weeks, and then spring break would  
9 be the following week after that. I can make up work after  
10 hours, but I do have days that I work full days, but it's  
11 mainly school.

12 THE COURT: Thank you, Mr. XXXXX.

13 JUROR NO. 46: I'm juror 46. My brother is  
14 getting married on Friday morning.

15 THE COURT: Where?

16 JUROR NO. 46: In Salt Lake. I have been invited  
17 to attend -- I'm planning on going to a conference starting  
18 on the 17th of March until the 27th.

19 THE COURT: What is the conference?

20 JUROR NO. 46: Oxford University in England. And  
21 I would also miss at least eight credit hours that I  
22 couldn't make up otherwise for school.

23 THE COURT: Thank you, Mr. XXXXXXXXXXXX.

24 Ladies and gentlemen, is there any member of the  
25 jury panel who has a special disability or an impairment

1 that would make serving as a member of the jury difficult or  
2 impossible?

3 Let the record reflect that no one stood.

4 I want to now just give you a very brief statement  
5 about what this case is about. The reason I'm doing this is  
6 I want you to let us know whether or not you are familiar  
7 with the parties or the issues in this case.

8 This case involves a dispute between the  
9 plaintiff, SCO, and the defendant, Novell, over the  
10 ownership of a copyright to a computer program known as  
11 UNIX. Plaintiff asserts that the ownership of the copyright  
12 to UNIX transferred from Novell to a predecessor to  
13 plaintiff in agreements made in 1995 and 1996. Defendant  
14 asserts that the agreements did not transfer ownership of  
15 the UNIX copyrights. Other claims and counterclaims between  
16 the plaintiff and defendant flow out of that dispute.

17 Have any of you heard or read anything about this  
18 case? If so, would you please stand.

19 Let's begin with Ms. XXXXXXXXXX. To what extent  
20 are you familiar with this case?

21 JUROR NO. 15: I read the article in the newspaper  
22 yesterday, and didn't form an opinion, but just read the  
23 article.

24 THE COURT: I think what I probably ought to do is  
25 all of you who are standing, -- Ms. Malley, will you please

1 take their numbers -- if you will just shout out your  
2 numbers. What I think is probably safer to do is when this  
3 process is almost over, I'm going to ask a number of  
4 questions that I don't want you to answer here in the  
5 courtroom but rather will bring you back one at a time into  
6 the jury room where in the presence of myself and counsel  
7 will have you come in one at a time and answer the question.  
8 I think it's going to be best if we -- instead of have you  
9 answer anything further about what you may know about the  
10 case now, I'm going to have you come back during that little  
11 part of the process. So if you would just, in order, shout  
12 out your juror number. And keep in mind, we'll have you  
13 come back in a few minutes.

14 JURORS: 15, 18, 23, 26, 37, 44, 45.

15 THE COURT: Thank you.

16 I'm now going to ask counsel for the plaintiff to  
17 stand and introduce himself and those who are sitting at the  
18 table with him. And he is also going to read to you a list  
19 of the witnesses that will be called by the plaintiffs in  
20 this case. And he's going to give some identifying  
21 characteristic, for example, where they live or who they  
22 work for. The purpose of this is to see whether or not any  
23 of you know these individuals that you are going to now be  
24 introduced to and whether or not you may be personally  
25 familiar with any of the witnesses that are going to be

1     called. So please listen very carefully. After you've had  
2     the introductions, I'll ask you to stand if you know any of  
3     these people.

4             MR. HATCH: Thank you, Your Honor.

5             My name is Brent Hatch with the Salt Lake law firm  
6     of Hatch James & Dodge. At the table is Stuart Singer and  
7     Ted Normand from the law firm Boies Schiller & Flexner.  
8     Also at the table is Ryan Tibbetts, who is an executive with  
9     the SCO Group, our client, the plaintiff, in this action.  
10    And with us as well is Rick Fuentes.

11            THE COURT: Mr. Hatch, can you identify the law  
12    firm with which --

13            MR. HATCH: I did. Boies Schiller is the law  
14    firm.

15            THE COURT: Okay. Thank you.

16            MR. HATCH: Thank you, Your Honor.

17            The potential witnesses in this case include Dr.  
18    Christine Botosan, who is a professor of accounting at the  
19    University of Utah; William Broderick, a former employee of  
20    Novell, employee of SCO, who is, I believe, in New Jersey;  
21    Thomas Cargill, a software consultant in Boulder, Colorado;  
22    Ted Chatlos, a former Novell executive in New Jersey;  
23    Gervaise Davis, a lawyer in Monterey, California, and he's a  
24    law professor at Santa Clara University law school; Robert  
25    Frankenberg, a former CEO of Novell, who I believe lives in



1 Utah; Lee Johnson, a citizen of Utah; John Maciaszek, a  
2 former employee of Novell and a current employee of SCO; Ty  
3 Mattingly, a former Novell executive living in Utah County;  
4 Darl McBride, a former CEO of SCO who lives in Salt Lake  
5 City; Jack Messman, a former CEO of Novell who lives in  
6 Massachusetts; Doug Michels, a founder and executive of  
7 Santa Cruz Operation in Santa Cruz, California; Gary Pisano,  
8 a professor of business administration at the Harvard  
9 business school; Chris Sontag, former senior vice president  
10 of SCO who lives in Salt Lake City, Utah; Duff Thompson, a  
11 former senior vice president of Novell and former board  
12 member of SCO, and lives in Utah County; Ryan Tibbitts, who  
13 you've met, was an executive at SCO, lives here in Utah;  
14 Ralph Yarro, a former chairman of SCO who lives in Orem,  
15 Utah; Larry Gasparro, a former executive of SCO, and I'm not  
16 sure where he is now, but he's back east somewhere; Burt  
17 Levine, a former lawyer at Novell, who I believe is in New  
18 Jersey; Alok Mohan, a former CEO of Santa Cruz Operation in  
19 Santa Cruz, California; Maureen O'Gara, a news reporter in  
20 the technology industry, who lives, I believe, in Long  
21 Island, New York; Gregory Petite, a former executive of SCO,  
22 who is in Massachusetts; Stephen Sabbath, former general  
23 counsel of Santa Cruz Operation, in California; Christopher  
24 Stone, a senior vice president at Novell, and I'm not sure  
25 where he is now; Jean Acheson, a former employee of SCO in

1 Salt Lake City; Gregory Jones, a Novell employee, I believe  
2 lives in Utah County; Paul Moxley, who is a Salt Lake City  
3 attorney; Kim Madsen, a former director of corporate affairs  
4 for Santa Cruz Operation, in California; Joseph LaSala, a  
5 former employee of Novell, who I believe lives in the  
6 D.C. -- Washington, D.C. area; Phillip Langer, a former  
7 sales executive of SCO, in Illinois; Andrew Nagle, a senior  
8 director of product development, in Connecticut; Michael  
9 Olsen, a former executive at SCO who is in Utah County; and,  
10 Jim Wilt, a former executive of Santa Cruz Operation, who I  
11 believe is in Switzerland.

12 MR. HATCH: Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Hatch.

14 Ladies and gentlemen, do any of you know Mr. Hatch  
15 or any of the other attorneys that were introduced to you or  
16 are you familiar with their law firms, or do any of you  
17 recognize any of the witnesses that will be called as just  
18 identified by Mr. Hatch? If so, would you please stand.

19 Ms. XXXXXXXX.

20 JUROR NO. 22: Yes. Do you want me to explain?

21 THE COURT: Yes.

22 JUROR NO. 22: Ryan Tibbitts, we were neighbors  
23 ten years ago in Jeremy Ranch.

24 THE COURT: All right. Were you friends?

25 JUROR NO. 22: We were in the same ward, but on

1 opposite ends of Jeremy Ranch.

2 THE COURT: Would that relationship from ten years  
3 ago affect your ability to be a totally fair and impartial  
4 juror in this case?

5 JUROR NO. 22: No.

6 THE COURT: Are you confident of that?

7 JUROR NO. 22: Yes.

8 THE COURT: All right. Thank you, Ms. XXXXXXXX.

9 Mr. Brennan, would you please make the same  
10 introductions.

11 MR. BRENNAN: Thank you, Your Honor.

12 Good morning, ladies and gentlemen. My name is  
13 Sterling Brennan. I practice law here in Salt Lake City  
14 with the law firm of Workman Nydegger. I am joined at  
15 counsel table by two of my colleagues, Michael Jacobs and  
16 Eric Acker. Mr. Jacobs and Mr. Acker practice with the law  
17 firm of Morrison & Foerster. I also have with me at counsel  
18 table Mr. Dana Russell. Mr. Russell is the senior vice  
19 president and the chief financial officer of our firm's  
20 client, Novell, Inc. Mr. Russell is from Morgan, Utah, and  
21 attended, as an undergraduate student and a master's  
22 student, Weber State University. He now resides in the east  
23 coast.

24 In terms of witnesses that Novell expects to call  
25 at trial: Mr. Greg Jones, who is a Novell in-house

1 attorney, and he resides in Utah County; Mr. Jack Messman,  
2 who is the former chief executive officer of Novell, and he  
3 resides in California; Mr. Joe LaSala, who is the former  
4 general counsel of Novell, and he resides on the east coast  
5 in the Massachusetts area; Mr. Chris Stone, who is a former  
6 senior Novell executive, and Mr. Stone presently resides in  
7 Summit County; Mr. Tor Braham, who is a former attorney with  
8 the law firm of Wilson Sonsini Goodrich & Rosati in Palo  
9 Alto, California; Mr. Jim Tolman, who is the former Novell  
10 chief financial officer, and he resides in the San Jose,  
11 California area; Mr. David Bradford, who is also a former  
12 Novell general counsel, and he resides here in Salt Lake  
13 City; Ms. Allison Amadia, who is a former Novell attorney,  
14 and she resides in the San Francisco Bay Area; Mr. Aaron  
15 Alder, who is an attorney with the law firm of Wilson  
16 Sonsini Goodrich & Rosati, and he resides in the Bay Area in  
17 California; and then Mr. Terry Musika, who is a practicing  
18 accountant, and he lives on the east coast.

19 In addition, Mr. Michael DeFazio, who is a former  
20 Novell executive; Mr. Samuel Greenblatt, who is an executive  
21 at CA, Inc.; Mr. Scott Handy, who is an executive with IBM;  
22 and Michael Danaher, who also is an attorney with the law  
23 firm of Wilson Sonsini Goodrich & Rosati, also in the San  
24 Francisco Bay Area.

25 Thank you, Your Honor.

1 THE COURT: Thank you, Mr. Brennan.

2 Ladies and gentlemen, do any of you know Mr.  
3 Brennan, are you familiar with his law firm, or any of those  
4 individuals that you were introduced to at the table, or do  
5 any of you recognize the names of any of the witnesses that  
6 Mr. Brennan indicated that he would call?

7 Ms. XXXXXXXXX.

8 JUROR NO. 15: Juror number 15. I'm long time  
9 friends with Rick and Denise Nydegger. We're not close now,  
10 but we were years ago.

11 THE COURT: You have known Mr. Nydegger for a long  
12 time?

13 JUROR NO. 15: Yes.

14 THE COURT: You are not close now, but you had a  
15 long friendship. Do you think that would interfere with  
16 your ability to be a fair and totally impartial juror?

17 JUROR NO. 15: No.

18 THE COURT: Are you confident of that?

19 JUROR NO. 15: Yes.

20 THE COURT: Yes, sir.

21 JUROR NO. 40: XXX XXXXXX, juror number 40. I'm  
22 an acquaintance of Mr. Russell. I've done several real  
23 estate transactions with him in the past.

24 THE COURT: Would that relationship affect your  
25 ability to be a totally fair and impartial juror in this

1 case?

2 JUROR NO. 40: I don't believe so.

3 THE COURT: Are you confident of that, Mr. XXXXXX?

4 JUROR NO. 40: Yes.

5 THE COURT: All right. Thank you.

6 Ladies and gentlemen, do any of you recognize any  
7 other potential juror as a former friend, roommate, any  
8 other relationship with anyone else on the jury panel?

9 Do any of you personally know me, Judge Ted  
10 Stewart, or any member of your immediate family know me?

11 JUROR NO. 44: Do you want me to go first?

12 THE COURT: Mr. XXXXXX, if you would go, please.

13 JUROR NO. 40: I served on the Morgan County  
14 republican chair several years ago when you were running for  
15 governor against Mike Leavitt and others.

16 THE COURT: Well, that answers my question because  
17 I didn't run for governor. I ran for senate, but it was  
18 that same year. There were so many of us, I don't blame you  
19 at all for not being able to keep track. Other than that,  
20 in 1992, let me ask you this, would that former association  
21 interfere with your ability to be a totally fair and  
22 impartial juror or is there anything else about that  
23 association that would interfere with your ability to be a  
24 juror in this case?

25 JUROR NO. 40: No, sir.

1 THE COURT: Thank you, Mr. XXXXXX.

2 Ms. XXXXX.

3 JUROR NO. 44: Juror 44. My brother-in-law,  
4 Daniel Brough, is a lawyer, so I just asked him, I'm going  
5 in for juror duty, do you know anything about this. He just  
6 said he knew of you.

7 THE COURT: Is he from Kaysville?

8 JUROR NO. 44: His law -- one of the people who  
9 works with him, his good friend. Does that make sense?

10 THE COURT: I do know some Broughs from Kaysville.

11 JUROR NO. 44: No. He lives in Lehi now.

12 THE COURT: All right. Thank you.

13 Ladies and gentlemen, other than a divorce, have  
14 any of you or a member of your immediate family ever  
15 participated in a lawsuit either as a party, a witness, or  
16 in any other capacity? Again, other than a divorce, have  
17 you or a member of your immediate family ever participated  
18 in a lawsuit either as a party, a witness, or in any other  
19 capacity? If so, would you please stand.

20 Ms. XXXX, would you tell us what.

21 JUROR NO. 2: I was attacked by a dog when I was  
22 eight years old, and we sued and won.

23 THE COURT: You were quite young?

24 JUROR NO. 2: Yeah.

25 THE COURT: Was there anything about that

1 experience that would interfere with your ability to be a  
2 juror in this case?

3 JUROR NO. 2: No.

4 THE COURT: Did you feel as if the judicial system  
5 worked for you in that case?

6 JUROR NO. 2: Yes.

7 THE COURT: Any strong feelings out of that that  
8 would affect your ability to be a juror here?

9 JUROR NO. 2: No.

10 THE COURT: All right. Thank you, Ms. XXXX.  
11 Okay.

12 JUROR NO. 13: Juror 13. I don't know if you want  
13 to know about this, but bankruptcy court.

14 THE COURT: Yourself?

15 JUROR NO. 13: Right.

16 THE COURT: Currently or recently?

17 JUROR NO. 13: Uh-huh, and it was just discharged.

18 THE COURT: Is there anything about that  
19 experience that would interfere with your ability to be a  
20 juror in this case?

21 JUROR NO. 13: No.

22 THE COURT: Do you feel as if the judicial system  
23 worked for you in that case?

24 JUROR NO. 13: I do.

25 THE COURT: All right. Thank you.



1 Mr. XXXXXXX.

2 JUROR NO. 14: My father had a small claims, civil  
3 dispute I suppose.

4 THE COURT: Anything out of that experience that  
5 would interfere with your ability to be a juror in this  
6 case?

7 JUROR NO. 14: Not at all.

8 THE COURT: Thank you.

9 Mr. XXXXXXX.

10 JUROR NO. 16: Five years back my brother was --  
11 almost six years -- in the federal system. He was arrested.  
12 The charges were disruption of interstate commerce.

13 THE COURT: Anything about that experience that  
14 would interfere with your ability to be a juror in this  
15 case?

16 JUROR NO. 16: No.

17 THE COURT: Do you feel like he was treated fairly  
18 by the system?

19 JUROR NO. 16: I guess, yeah. I mean --

20 THE COURT: I would not take that as an  
21 overwhelming endorsement. But, again, the question is  
22 whether or not that criminal matter would affect your  
23 ability to be a juror in this civil case?

24 JUROR NO. 16: No.

25 THE COURT: Thank you.

1 JUROR NO. 17: XXXXX XXXXX, juror 17. It was a  
2 bankruptcy.

3 THE COURT: Just recently?

4 JUROR NO. 17: Four years ago.

5 THE COURT: Mr. XXXXX, did you feel as if the  
6 system worked appropriately for you?

7 JUROR NO. 17: Yes, sir.

8 THE COURT: Was there anything about that  
9 experience that would interfere with your ability to be a  
10 juror in this case?

11 JUROR NO. 17: No.

12 THE COURT: All right. Thank you.

13 JUROR NO. 25: XXXXXXX XXXXX, juror number 25. I,  
14 too, had a small claims court about 25, 27 years ago.

15 THE COURT: Anything about that experience that  
16 would interfere with your ability to be a juror here?

17 JUROR NO. 25: No, Your Honor.

18 THE COURT: Thank you, Mr. XXXXX.

19 JUROR NO. 36: Juror number 36. My daughter was a  
20 party to a lawsuit for some mortgage -- I don't remember  
21 what it was. Also, I left a company along with some  
22 co-workers. We were sued by the company, our former  
23 employer. It was settled out of court. And neither one of  
24 those would make a difference to me one way or the other.

25 THE COURT: You don't feel as if the judicial

1 system is operated ineffectively or prejudicially in either  
2 of those instances?

3 JUROR NO. 36: No.

4 THE COURT: Thank you, Mr. XXXXXX.

5 Ms. XXXXXX.

6 JUROR NO. 37: My husband was involved in a  
7 lawsuit with a division of Dunford Bakery, the distributor  
8 in California.

9 THE COURT: How did the lawsuit turn out?

10 JUROR NO. 37: We lost.

11 THE COURT: Do you feel as if the system worked or  
12 did not work in that instance?

13 JUROR NO. 37: I honestly couldn't say I know.

14 THE COURT: Is there anything about that  
15 experience that would interfere with your ability to be a  
16 juror in this case?

17 JUROR NO. 37: I don't think so, no.

18 THE COURT: Thank you, Ms. XXXXXX.

19 JUROR NO. 41: I am XXXXXX XXXXXXXXX, juror 41. I  
20 am currently involved in four court proceedings. Let's see,  
21 there is a probate matter that is being contested at the  
22 moment as well as I have been set up as a defendant against  
23 Capital One. And that's currently going forward. There is  
24 a bankruptcy case currently filed with this court. It was  
25 filed just last week. And then there is also an issue

1 concerning a life insurance policy that's also filed in this  
2 court.

3 THE COURT: Mr. XXXXXXXX, some of those  
4 experiences are current, but, collectively, is there  
5 anything about those experiences that you have had with the  
6 judicial system that would interfere with your ability to be  
7 a totally fair and impartial juror here?

8 JUROR NO. 41: Well, I don't view the system as  
9 too fair for me, but I just don't know.

10 THE COURT: All right. Thank you.

11 Ms. XXXXX.

12 JUROR NO. 42: I am juror 42, and I sued for  
13 damages on a rental property about 20 years ago.

14 THE COURT: Anything about that experience that  
15 has lingered and do you have any feelings about it or the  
16 judicial system or your treatment by the judicial system  
17 that would interfere with your ability to be a juror here?

18 JUROR NO. 42: No, nothing would interfere.

19 THE COURT: Thank you.

20 Ms. XXXXXXXX.

21 JUROR NO. 43: I'm juror number 43, and my mother  
22 was involved in a federal case where she was found guilty  
23 and served two years in federal prison.

24 THE COURT: Do you feel she was treated fairly?

25 JUROR NO. 43: Yes.

1 THE COURT: Anything about that experience that  
2 would interfere what your ability to be a juror in this  
3 civil case?

4 JUROR NO. 43: No.

5 THE COURT: All right. Thank you, Ms. XXXXXXXX.  
6 Ms. XXXXX.

7 JUROR NO. 44: Juror number 44. My husband's  
8 family was involved in something when he was younger. I  
9 don't really know a lot about it, but I think everything  
10 went, you know, according to justice and everything.

11 THE COURT: No feelings from that experience?

12 JUROR NO. 44: No.

13 THE COURT: Thank you.

14 JUROR NO. 47: I am juror number 47, XXXXX XXXX.  
15 I was charged approximately three years ago in the Sandy  
16 City court with withholding evidence. I pleaded no contest  
17 and was given six months probation.

18 THE COURT: Anything about that experience,  
19 Mr. XXXX, that would interfere with your ability to be a  
20 juror in a civil case?

21 JUROR NO. 47: No. It was my fault. I didn't  
22 know the law.

23 THE COURT: All right. Thank you.

24 Ms. XXXXXXXX.

25 JUROR NO. 48: Juror number 48. Two years ago I

1 was involved in a car accident where a semi rear-ended me  
2 and totaled my car and put me in intensive care for a couple  
3 of days. They settled with me out of court.

4 THE COURT: Anything about that experience that  
5 would interfere with your ability to be a juror in this  
6 case?

7 JUROR NO. 48: No. They settled profitable.

8 THE COURT: So you were happy with the outcome?

9 JUROR NO. 48: I was.

10 THE COURT: Ladies and gentlemen, I have indicated  
11 to you that, as jurors, it will be your responsibility in  
12 this case to be the finder of the facts, but it will be my  
13 responsibility to determine and communicate to you what the  
14 law is and what evidence will be admissible for you to hear.  
15 Do any of you have a problem with that division of labor?  
16 If so, would you please stand.

17 Let the record reflect that no one stood.

18 Ladies and gentlemen, unless you have already  
19 disclosed it, have you or a member of your immediate family  
20 ever been employed by a computer company or a computer  
21 software developer? Some of you have indicated it during  
22 the course of your introduction, but this is for those of  
23 you who did not previously disclose it.

24 JUROR NO. 4: I'm XXXXX XXXX, juror number four.  
25 I have worked for 25 years for a health care software

1 developing company. It's been owned by many different  
2 companies, but it's currently Siemens Medical out of  
3 Malvern, Pennsylvania.

4 THE COURT: Thank you.

5 JUROR NO. 7: I'm juror number seven. My partner  
6 works for ITT. I don't know exactly what type of software  
7 they make, but she does do something with it. My mom works  
8 at Fairchild. They also work on it. I don't know exactly  
9 what it is that she does, but she works on some type of  
10 motherboard, or something like that. Both of their  
11 companies, whenever they work on it, it is completely  
12 confidential, so they don't talk about it much.

13 THE COURT: Does your mother work in computer in  
14 the manufacturing?

15 JUROR NO. 7: She does -- she makes the  
16 motherboards. She burns the software onto it. I don't  
17 know, something like that.

18 THE COURT: Thank you.

19 Let's back up to juror number three.

20 JUROR NO. 3: XXXXXX XXXXX. Was I employed by  
21 them? No. However, there was a company, I think on the  
22 east coast, Technologist, they work with library systems.  
23 And I'm trying to think who the owner of it is because it  
24 could be a different system. We beta tested their software  
25 for the library systems. It was a circuit. They were the

1 beta testing company for the nation. We were directly with  
2 that company for about three months to get it up and  
3 running. Now it's used broadly in our library system as  
4 well.

5 THE COURT: Thank, Ms. XXXXX.

6 JUROR NO. 14: Juror number 14. I've worked in  
7 the past for software development companies. Park City  
8 Group. It's a point of sale software, retail point of sale  
9 software. Nebo International, we were actually partnered  
10 with Microsoft in end-user training certification of  
11 software. And for the most recent was one arm of Sun Garden  
12 International -- or Sun Garden Investment Systems. It was a  
13 personal finance retirement planning software.

14 THE COURT: Thank you, Mr. XXXXXXXX.

15 Ms. XXXXXXXXXXXX.

16 JUROR NO. 15: Yes. As I've explained, my sister  
17 is employed as a paralegal. She does trademark  
18 infringement. For the company she works for, she's worked  
19 in the past with Claris and Sun Microsystems. I felt I  
20 needed to clarify.

21 THE COURT: Thank you. That's helpful.

22 JUROR NO. 21: Juror 21. I used to work at Micron  
23 Technology, and also a company that was merged with Intel  
24 starting the manufacturing of the IT group.

25 THE COURT: In the IT group?



1 JUROR NO. 21: I'm no longer employed with them.

2 THE COURT: Thank you.

3 JUROR NO. 22: Juror 22. My husband was worldwide  
4 creative director for Intel Corporation and a number of  
5 other corporations in Silicon Valley.

6 THE COURT: Primarily dealing with Web?  
7 Primarily dealing with Web designs?

8 JUROR NO. 22: Yes.

9 THE COURT: Software related to the Web?

10 JUROR NO. 22: Yes. And for Intel, it was the  
11 pentium processor. He did the marketing for that.

12 THE COURT: All right. Was he always on the  
13 marketing side?

14 JUROR NO. 22: Uh-huh. (Affirmative)

15 THE COURT: Thank you.

16 JUROR NO. 26: I'm XXXXXXXXXX XXXXXXXX. I'm juror  
17 number 26. We opened the first small computer -- personal  
18 computer store in Canada in 1975. We owned that store for a  
19 few years before we moved back here to Utah. My husband and  
20 my sons have always been very involved in computers. My  
21 youngest son now works for a software developer. I am not  
22 aware of any of them ever having particularly worked with  
23 Novell or UNIX.

24 THE COURT: All right. Thank you.

25 JUROR NO. 27: I am juror number 27. Both of my

1 parents are electrical engineers. My dad worked a lot with  
2 modems and different things. My mom, more like airplane  
3 simulators. I have an uncle who is in the video game design  
4 with Microsoft.

5 THE COURT: Thank you.

6 JUROR NO. 21: Juror number 21. My uncle and  
7 brother-in-law were both former employees of Novell.

8 THE COURT: Of Novell?

9 JUROR NO. 21: Yes.

10 THE COURT: How long ago were they employed there?

11 JUROR NO. 21: One was employed for over 15 years,  
12 my uncle. And my brother-in-law, probably about five or six  
13 years.

14 THE COURT: Is there anything about that  
15 relationship between them and Novell that would interfere  
16 with your ability to be a totally fair and impartial juror  
17 here?

18 JUROR NO. 21: Not that I'm aware of.

19 THE COURT: Did they leave under circumstances  
20 that left them unhappy?

21 JUROR NO. 21: Yes.

22 THE COURT: All right. Thank you.

23 JUROR NO. 44: Juror 44. My husband, when he was  
24 working on an undergraduate degree, did an internship at  
25 Novell. He did his degree in finance. So he worked kind of

1 in the collections department, not with any of the software,  
2 but he did work at Novell. And he quit because working and  
3 going to school was a lot of work. I talked him into  
4 quitting.

5 THE COURT: Was there anything about that  
6 relationship or his leaving that would interfere with your  
7 ability to be a fair and impartial juror here?

8 JUROR NO. 44: No.

9 THE COURT: You're confident of that, Ms. XXXXX?

10 JUROR NO. 44: Yes.

11 THE COURT: Thank you.

12 JUROR NO. 45: Juror number 45. My brother had  
13 his own computer company. He set up all the Internet for  
14 the Olympics here in 2002. Also I've got a nephew that  
15 works for a computer company in Orem.

16 THE COURT: Thank you.

17 Ladies and gentlemen, do any of you have strong  
18 feelings, whether they be positive or negative, about large  
19 computer companies, such as IBM, Microsoft, Novell or Sun?  
20 If so, would you please stand.

21 Let the record reflect that no one stood.

22 Ladies and gentlemen, do any of you know what  
23 Linux is, L-i-n-u-x? If so, would you please stand.

24 Would you briefly give your jury number and tell  
25 us how you know what it is, what it is that generated your

1 familiarity with it.

2 JUROR NO. 3: Juror number three, XXXXXX XXXXX. I  
3 have not worked with the system. It is an open-coded system  
4 that's an operating system. There are, I know, some basic  
5 setups so those users that aren't programmers can use it. A  
6 lot of my friends have actually started using the Linux  
7 software instead of Windows. I have very little contact  
8 with it myself.

9 THE COURT: Thank you.

10 JUROR NO. 4: Juror number four. Some of the  
11 platforms that my employer uses are based on Linux operating  
12 systems. We interface with it, but we do not use it  
13 directly in my specific business unit.

14 THE COURT: Mr. XXXXXXXX.

15 JUROR NO. 14: Juror number 14. My familiarity is  
16 somewhat in passing. Working in marketing communications  
17 with Web development companies, I work closely with ITs, so  
18 I do understand some basic differences between Windows and  
19 Linux as it relates to Web development.

20 THE COURT: Thank you.

21 JUROR NO. 16: XXXX XXXXXX, number 16. In 2001, I  
22 built a new computer and used Linux.

23 THE COURT: Thank you.

24 JUROR NO. 20: Juror number 20. I know what I've  
25 read in computer enthusiasts publications. I tried building

1 a computer based on Linux. It didn't work very well, so I  
2 went back to Windows.

3 THE COURT: Thank you.

4 JUROR NO. 21: Juror 21, I have done some pearl  
5 scripting in Linux.

6 THE COURT: You've done some what?

7 JUROR NO. 21: Pearl scripting. It's a program  
8 language primarily on Linux.

9 JUROR NO. 26: Juror number 26. I personally do  
10 not know a lot about Linux, but my husband and my sons do.  
11 We have approximately ten to 15 computers in our home, half  
12 of which are Linux based and half of which are Windows  
13 based, or others. I look at my book shelves and I see  
14 Linux, Linux, Linux.

15 THE COURT: Thank you.

16 JUROR NO. 27: Juror number 27. Both of my  
17 parents use Linux a lot, but they are working engineers.

18 THE COURT: You don't have any personal  
19 familiarity with it, though?

20 JUROR NO. 27: No.

21 JUROR NO. 28: Juror number 28. I have used  
22 multiple Linux programs in my field. I haven't currently  
23 used them for probably the past five or six years.

24 THE COURT: All right. Thank you.

25 JUROR NO. 41: Juror 41. I have both used and

1 built software for Linux distributions over the past 15  
2 years.

3 THE COURT: Thank you.

4 JUROR NO. 44: Juror 44. I've heard of it in  
5 passing. Just that it's another option besides Windows. I  
6 thought it was a free operating system.

7 THE COURT: Thank you.

8 JUROR NO. 46: Juror 46. I haven't personally  
9 used it, but I have a lot of friends who are big fans of  
10 Linux.

11 THE COURT: Thank you.

12 Ladies and gentlemen, have any of you ever used a  
13 computer operating system known as UNIX?

14 Mr. XXXXXX.

15 JUROR NO. 21: Yes. When I worked with Micron,  
16 again, goes back to perl scripting.

17 THE COURT: Mr. XXXXXX, anything about that  
18 experience with UNIX that would interfere or affect your  
19 ability to be a totally fair and impartial juror in this  
20 case?

21 JUROR NO. 21: No, Your Honor.

22 THE COURT: Thank you.

23 JUROR NO. 26: Juror number 26. I can't honestly  
24 say yes or no to that question because my husband and my  
25 sons are so into all the different --

1 THE COURT: Again, this is for you personally,  
2 whether or not you personally have.

3 JUROR NO. 26: Personally, no.

4 THE COURT: Ladies and gentlemen, this question  
5 may have been asked in a different way at the very  
6 beginning, but let me ask it again, have any of you seen,  
7 read or heard anything about disputes related to the  
8 software operating system UNIX? If so, would you please  
9 stand.

10 Some of you.

11 Let me ask you this, is there anyone who did not  
12 stand when I had your numbers taken before?

13 All right. Thank you.

14 Unless you have already disclosed it, is there  
15 anyone else in the jury panel who either personally or a  
16 member of your immediate family worked for companies that  
17 licenses intellectual property or software?

18 Again, if you've already disclosed it once, you  
19 don't need to again.

20 Let the record reflect that no one stood.

21 Ladies and gentlemen, do any of you or a member of  
22 your immediate family own stock in SCO or Novell? If so,  
23 would you please stand.

24 Let the record reflect that no one stood.

25 Ladies and gentlemen, I'm now going to ask those

1 questions that I previously indicated would be asked but I  
2 do not want you to answer here in the courtroom now. Again,  
3 after all of them have been asked, we'll then have you  
4 stand, we'll take your juror number, and we'll have you come  
5 back one at a time into the jury room to answer the  
6 questions with just myself and necessary court personnel and  
7 counsel for the parties.

8           If you serve as a juror in this case and the jury  
9 finds in favor of either the plaintiff or the defendant and  
10 the plaintiff or defendant has suffered damages, would any  
11 of you have difficulty awarding the full measure of those  
12 damages?

13           Again, you have had a description of this case  
14 given to you and you have been introduced to the parties and  
15 counsel and witnesses for the parties. I'll ask you again,  
16 if any of you have heard or read anything about this case?

17           Is there anything about the specific claims made  
18 by the parties in this case that would make it difficult or  
19 impossible for you to serve as a juror and render an  
20 impartial honest verdict?

21           Is there any reason why you could not give the  
22 plaintiff or the defendant a fair trial?

23           Finally, there are those of you who are thinking  
24 of a matter relating to your ability to sit on this jury for  
25 a reason that I perhaps have not specifically asked you



1 about. Please consider this question, is there any other  
2 reason that you know of that would affect your ability to  
3 sit on this jury and render a fair and impartial verdict for  
4 either the plaintiff or the defendant?

5 If you would please be thinking about those  
6 questions for a moment, I'm going to ask for a brief  
7 side-bar with counsel.

8 (Side-bar conference held off the record.)

9 THE COURT: Unless you think your hearing has been  
10 affected, let me explain that that is a system whereby we  
11 are allowed to talk without you hearing us. It generally  
12 has worked very well, but I do have to make certain, did any  
13 of you hear any of the conversation that we were having?

14 I want you to know that's a considerable  
15 investment by you as taxpayers of the United States. In  
16 that limited respect, it was worthwhile, okay.

17 I have another question I would like to ask.  
18 Ladies and gentlemen, do any of you or members of your  
19 immediate family, to your knowledge, have investments in  
20 IBM, Sun Systems, Novell or Microsoft? If so, would you  
21 please stand.

22 Ms. XXXXX. I don't want you to disclose too much  
23 personal information.

24 JUROR NO. 3: I know at one point my father, who  
25 is now deceased, had some stock with Microsoft. I am

1     unaware if it was ever sold, if my mother still has it, or  
2     what has even happened to this stock. I wouldn't be  
3     surprised if it was sold upon my father dying.

4             THE COURT: All right. Thank you.

5             JUROR NO. 4: Juror number four. One of my  
6     siblings owns stock in IBM as well as myself.

7             THE COURT: You own stock in IBM?

8             JUROR NO. 4: I do own stock in IBM.

9             THE COURT: A considerable amount, small amount?

10            JUROR NO. 4: A couple hundred shares.

11            THE COURT: Thank you.

12            JUROR NO. 11: Juror number 11. My grandparents  
13     own a considerable amount in IBM.

14            THE COURT: Your grandparents?

15            JUROR NO. 11: Yeah.

16            My sister owns stock in Sun and IBM. And my  
17     family trust has stock in IBM.

18            THE COURT: A large amount, small amount?

19            I don't know her amount. My family trust is not a  
20     large amount.

21            THE COURT: Thank you, ladies and gentlemen.

22            Now if I may have all of those who feel that you  
23     need to answer the questions that I asked, that I indicated  
24     I would like you to come back into the jury room one at a  
25     time, would you please stand so we can take your numbers.

1 Again, all those who previously indicated that you were  
2 familiar with the case or read something or heard something  
3 or had seen something about the case, I would like you to  
4 stand again so we can make certain we have your numbers. Is  
5 there anyone else who feels as if they need to come in and  
6 answer the questions that I just asked you?

7 Do you have them all, Sandy?

8 Let's just go through them, if you would, please,  
9 quickly, beginning with you, Ms. XXXXXXXXX. Give us your  
10 numbers.

11 JURORS: 15, 18, 23, 26, 37, 44, 45.

12 THE COURT: All right. Thank you.

13 Ladies and gentlemen, while this happens, we're  
14 going to take a recess. I'm sure that some of you are  
15 probably grateful for that. Let me just give you some  
16 instructions during the course of this. This is really  
17 quite important. Number one, I do not want you to discuss  
18 this case with anyone. I don't want you to visit and  
19 surmise or call anybody or anything at all. No discussion  
20 about this case.

21 Secondly, if in the course of this break you are  
22 to run into someone you see sitting at these tables in the  
23 hallway or restroom, do not say hi to them, do not  
24 acknowledge them, don't high-five them, don't do anything.  
25 I do not want any kind of interaction taking place between

1 you and them and they are, in turn, instructed not to have  
2 any with you. If you pass them in the hall and they don't  
3 acknowledge you, please do not be offended. Don't think  
4 they are not friendly. They are simply doing what the Court  
5 has asked them to do.

6 I think this will probably take 45 minutes. So  
7 I'm going to ask all of you to be back in your seats at  
8 12:00 o'clock. There are restrooms in the hallway. There  
9 is a break room of sorts with a very limited supply of  
10 anything downstairs. But those of you who stood up, if you  
11 would please stay in the courtroom until you have been  
12 brought back into the jury room. The rest of you may take a  
13 40-minute recess. Thanks.

14 (Recess)

15 (Whereupon, the following proceedings were held in  
16 the jury room.)

17 THE COURT: My intention is to dismiss for cause  
18 number 15. We'll not have her come back.

19 THE CLERK: XXXXXXXX, number 18.

20 THE COURT: Any objection to Mr. XXXXXXXX being  
21 dismissed for cause?

22 MR. BRENNAN: I'm not quick enough.

23 THE COURT: Employment.

24 15 and 18 we'll not bring back.

25 THE CLERK: Twenty-three?

1 THE COURT: Bring back.

2 THE CLERK: Number 26?

3 THE COURT: Bring back.

4 THE CLERK: Thirty-seven?

5 THE COURT: Bring back.

6 THE CLERK: Forty-four and 45?

7 THE COURT: Bring them both back. I just needed  
8 to take care of those two, counsel.

9 You understand they will come in and sit down.

10 We'll ask them questions. I'll give each of you an  
11 opportunity to ask questions as well, just one of you per  
12 side. So who will that be?

13 Mr. Hatch, Mr. Brennan.

14 THE CLERK: Mr. XXXXXXXX, juror 23.

15 THE COURT: Mr. XXXXXXXX, tell me what it was you  
16 found yourself answering yes to in that list of questions,  
17 would you please.

18 JUROR NO. 23: The question you asked about what  
19 have you read about this case. I just went on line  
20 yesterday to see what type of case I would be coming to  
21 today. I just looked at your calendar. Then I just Goggled  
22 SCO vs. Novell, and read a little bit. Read probably 15, 20  
23 minutes about what has happened in the case for the last --  
24 started in '95 possibly, so --

25 THE COURT: Mr. XXXXXXXX, did you come out of that

1 examination with an opinion as to how this case ought to be  
2 decided?

3 JUROR NO. 23: No.

4 THE COURT: Did you understand everything that you  
5 were reading?

6 JUROR NO. 23: For the most part. There were some  
7 legal terms in there that I didn't recognize or come across  
8 previously, but it was more or less kind of a brief synopsis  
9 of what was going on pertaining to two companies, so not in  
10 great detail.

11 THE COURT: Mr. XXXXXXXX, I'm sure you can  
12 understand that it is very important that I do everything I  
13 can to make certain that no juror is serving on this jury  
14 who already has a preconceived notion about this case and  
15 how it ought to turn out, to make certain they don't have a  
16 view, well, you know, that company should not have done this  
17 or that company should not have done that, whatever the case  
18 may be. Do you have any of those notions as you sit here  
19 today?

20 JUROR NO. 23: I don't. Like I say, it was just  
21 kind of a brief background. I didn't get into the details.  
22 I would say what we went into today I learned just as much  
23 about Linux and UNIX and Novell and SCO. I mean, it went  
24 into a little bit about a settlement of \$25 million -- \$2.5  
25 million. Partially reversed. That's why we're here to hear

1 more about that. I think that settlement was for Novell, I  
2 believe. And now it's been partially reversed, I think.  
3 Like I say, it was -- that's about all I know.

4 THE COURT: Was there anything else in any of  
5 those questions I asked you that you felt you need to answer  
6 here in the jury room?

7 JUROR NO. 23: No.

8 THE COURT: Do you have any questions, Mr. Hatch?

9 MR. HATCH: Mr. XXXXXXXX, you indicated that you  
10 did a Google search for SCO and Novell, correct?

11 JUROR NO. 23: Yeah.

12 MR. HATCH: Other than the Wikipedia sites?

13 JUROR NO. 23: The next link was legal, I think.  
14 I didn't read anything. I just kind of went to that site  
15 and just -- I think it was a summary of the previous court  
16 case. Other than that, I didn't read anything in the  
17 newspaper article that was out, but I assume most of what  
18 was in the newspaper is similar to what I read in Wikipedia.

19 MR. HATCH: You did say you read the Daily Herald  
20 and Deseret News. Have you ever read anything in the Daily  
21 Herald?

22 JUROR NO. 23: I haven't, no.

23 MR. HATCH: Based on what you saw in the Wikipedia  
24 article, did you view the Wikipedia article as either pro or  
25 con for either of the parties?

1 JUROR NO. 23: It seemed really fair. It didn't  
2 seem -- just a real brief synopsis of what went on since, I  
3 believe, '95. Fair to either side.

4 MR. HATCH: You indicated you felt you could be  
5 fair. The article didn't cause you to lean one way or the  
6 other?

7 JUROR NO. 23: No.

8 THE COURT: Mr. Brennan, anything?

9 MR. BRENNAN: No. Thank you.

10 MR. HATCH: Did you discuss anything you saw with  
11 anyone else?

12 JUROR NO. 23: My wife, but she and I both haven't  
13 had any dealings with Novell or SCO. She thought maybe it  
14 was more of a glamorous trial that I was going to, what  
15 trial are you going to.

16 MR. HATCH: You saw the --

17 JUROR NO. 23: I looked at the calendar real quick  
18 and realized it was a trial I knew nothing about. I decided  
19 to read a little bit, which I actually thought, as I was  
20 doing that, I probably shouldn't be doing this.

21 THE COURT: You have good instincts, Mr. XXXXXXXX.  
22 Follow them in the future.

23 Anything else?

24 MR. HATCH: That's it, Your Honor.

25 MR. BRENNAN: No. Thank you, Your Honor.



1           THE COURT: Thank you, Mr. XXXXXXXX. You may go  
2 back to the courtroom. You can take your recess until noon,  
3 okay.

4           THE CLERK: Ms. XXXXXXXX, number 26.

5           THE COURT: Take a seat, please, Ms. XXXXXXXX.

6           JUROR NO. 26: Thank you.

7           THE COURT: Ms. XXXXXXXX, what was it you felt you  
8 needed to reveal to us here?

9           JUROR NO. 26: You asked if we heard of a pending  
10 case. Of course I've heard my husband and my sons talk a  
11 little about the fact there is a dispute between Novell and  
12 UNIX, and I have heard talk. I haven't formed a judgment  
13 one way or the other, but I have heard them speaking about  
14 it.

15          THE COURT: So the only exposure you have had to  
16 this case is hearing your husband and your son talking about  
17 it?

18          JUROR NO. 26: My sons.

19          THE COURT: Did either of them express a strong  
20 viewpoint about the merits of the case, who ought to win or  
21 anything of that sort?

22          JUROR NO. 26: No.

23          THE COURT: It was just a discussion that the case  
24 was taking place?

25          JUROR NO. 26: Uh-huh. (Affirmative). They have

1 discussed it back and forth, you know.

2 THE COURT: What kind of things have they said?

3 JUROR NO. 26: I don't really remember because I  
4 take care of the bookkeeping end of the business and I let  
5 them worry about all the other stuff. There is one other  
6 thing, though, we do have a small part-time business of  
7 sorts where we do subscribe to Microsoft Partnership --  
8 Microsoft Partners -- is that what it's called?

9 THE COURT: All right. Ms. XXXXXXX, I hope you  
10 can understand, it's very important no juror sit on this  
11 case who is going to have a bias or a prejudice or any type  
12 of preconceived notion about how the case ought to turn out.  
13 As you sit here right now, can you tell me do you have a  
14 bias or prejudice, do you have a notion about how you think  
15 this case should end up?

16 JUROR NO. 26: No, I don't. I do know I have to  
17 be very, very careful not to tell my husband and sons don't  
18 discuss it ever when I'm around, because as they read in the  
19 papers, they likely would, but I would -- I personally would  
20 not have any bias or any preconceived notions or anything.

21 THE COURT: All right. Thank you.

22 Any questions?

23 MR. HATCH: Have you done any reading on line  
24 yourself?

25 JUROR NO. 26: No.

1 MR. HATCH: Do you have any opinion about Linux?

2 JUROR NO. 26: No. I just use whatever operating  
3 system my husband puts on for me, that's what I use.

4 THE COURT: Anything?

5 MR. BRENNAN: No questions. Thank you, Your  
6 Honor.

7 THE COURT: Thank you, Ms. XXXXXXXX.

8 JUROR NO. 26: Thank you.

9 THE CLERK: Juror 37, Ms. XXXXXXXX.

10 THE COURT: You indicated that you had read or  
11 seen or heard something about the case; is that right?

12 JUROR NO. 37: Yes, just a small bit.

13 THE COURT: Tell us what it was.

14 JUROR NO. 37: Just the article about the suit  
15 coming up between the two. I since have recognized I think  
16 I am a neighbor to one of the plaintiffs.

17 THE COURT: That would be?

18 JUROR NO. 37: I think their last name is  
19 McBride. They live in Oak Lane.

20 MR. HATCH: Where do they live?

21 JUROR NO. 37: Oak Lane.

22 MR. HATCH: Yeah.

23 THE COURT: Neighbors to them?

24 JUROR NO. 37: Yes. So in homeowners meetings, I  
25 have met them. And then the last homeowners meeting, after

1     they -- it was just the wife left, people in the group were  
2     talking about a lawsuit coming up, and their house had been  
3     for sale, she was talking about the concern there.

4             THE COURT: I'm glad you remembered that. As you  
5     sit here, do you have a notion about how this case ought to  
6     turn out based on what you have read or on that discussion,  
7     or the fact that you have a neighbor who would be involved  
8     in this matter?

9             JUROR NO. 37: No, just it may be awkward.

10            THE COURT: Awkward. Okay.

11            Any questions?

12            MR. HATCH: The neighbor you know that's out there  
13     with SCO, would you recognize him or his wife now?

14            JUROR NO. 37: I recognized his wife in the  
15     courtroom today, yes.

16            THE COURT: That's what jogged your memory?

17            JUROR NO. 37: Yes. I thought as they were  
18     talking about -- because I know -- I followed it a little  
19     bit in the paper, so I knew that neighbor was a SCO officer.  
20     So I thought possibly it would be. But because they have  
21     small children, mine are grown, I wasn't real acquainted  
22     with that guy other than homeowners meetings.

23            MR. HATCH: When you have talked with some of the  
24     other neighbors about the house was for sale, there was a  
25     lawsuit, did you connect the two somehow? Did you connect

1 the house being for sale and the lawsuit?

2 JUROR NO. 37: Yes, I did. Yes, I did.

3 MR. HATCH: In what way?

4 JUROR NO. 37: Just knowing things get tough, you  
5 may start shutting down income and have to put your house  
6 up. That was the intimation that was made among the group.

7 MR. HATCH: Do you have any personal feelings  
8 about the neighbors? I think you said you got to know them,  
9 met them through a homeowners association?

10 JUROR NO. 37: Correct.

11 MR. HATCH: Sometimes those can be friendly,  
12 sometimes hostile.

13 JUROR NO. 37: It was not hostile, no.

14 MR. HATCH: All right. You think you can be fair,  
15 then?

16 JUROR NO. 37: I think so.

17 MR. ACKER: Ma'am, did I hear you right, it would  
18 be awkward -- you would feel awkward?

19 JUROR NO. 37: Yeah.

20 MR. ACKER: Explain.

21 JUROR NO. 37: I realized that the wife recognized  
22 me after she was looking through the group and she was not  
23 happy to see me there.

24 MR. ACKER: Okay.

25 THE COURT: Thank you, Ms. XXXXXXXX, very much.

1 THE CLERK: Ms. XXXXX, number 44.

2 THE COURT: Ms. XXXXX, you stood because you had  
3 read something about the case?

4 JUROR NO. 44: Yeah. I told my family I was doing  
5 jury duty. They asked what the case was about. I don't  
6 know. Last night I got on line. I didn't read a lot  
7 because I didn't feel like it would be ethical to read a  
8 lot. I did read it was going to be a three-week case and  
9 kind of panicked. Honestly, your description of the case  
10 made more sense than what I read. Does that make sense? I  
11 just heard it was between Novell.

12 THE COURT: I'll take that as a considerable  
13 compliment.

14 JUROR NO. 44: I really skimmed. I was just  
15 trying to see what it was about. It was between Novell, and  
16 the other company I never heard of before. That it was a  
17 dispute, like you explained.

18 THE COURT: Did you learn enough that you came  
19 away from that brief reading with an idea about who ought to  
20 win?

21 JUROR NO. 44: No.

22 THE COURT: No inclination at all?

23 JUROR NO. 44: I didn't read enough because I  
24 didn't feel like it was ethical of me to do so.

25 THE COURT: Your instinct, again, was correct.

1           Ms. XXXXX, it's important that we make certain  
2   that no one sits on this jury who has a bias or a prejudice  
3   or a preconceived notion about how this case ought to turn  
4   out. As you sit here right now, do you have anything of  
5   that sort?

6           JUROR NO. 44: I don't know. The one thing that  
7   hit me as I was reading, as you said, it was based on --  
8   see, I'm not a computer person. The Linux system was kind  
9   of what I read. I thought that was a free version anyone  
10   can use. That struck me as kind of odd there would be a  
11   lawsuit involving what I thought was a free system. The  
12   rest, unlawful, I didn't read very much. I don't understand  
13   that part.

14          THE COURT: As you sit here, is there any reason  
15   why you don't think you should be allowed to sit on this  
16   jury?

17          JUROR NO. 44: That I shouldn't be allowed to sit,  
18   no. It would be a hardship. I'm a junior high school  
19   teacher and my students would have a substitute for three  
20   weeks, but we could make do. We could make do.

21          THE COURT: Any questions for Ms. XXXXX?

22          MR. HATCH: You indicated your husband had done an  
23   internship at Novell through school.

24          JUROR NO. 44: Yes. He was going to BYU. Another  
25   student in our neighborhood we went to church with, I think

1 they worked at Novell, were quitting. They knew there was  
2 an opening for an internship. My husband was doing  
3 financials. And so he worked part-time, 20 hours a week, if  
4 I remember correctly, for about a year. He did collections  
5 where he worked with accounts that weren't currently being  
6 paid. It usually was with school districts, kind of a  
7 problem with the financial secretaries, it wasn't being  
8 taken care of. Like I said, he worked for about a year  
9 during the summer. I was working at the time. And it was a  
10 stretch for him to work and go to school, so I convinced him  
11 to quit and just work so he could focus on school. That  
12 was, I think, four years ago. He worked for three years.  
13 Now he's back doing an MBA this year.

14 MR. HATCH: Was his experience at Novell a  
15 positive one or a negative one?

16 JUROR NO. 44: It was a good resume builder. It  
17 was a good internship when internships were hard to find. I  
18 don't know that I have positive or negative feelings. Like  
19 I said, it was a job when it was hard to find a job.

20 MR. HATCH: Would that cause you to lean one way  
21 or another towards Novell?

22 JUROR NO. 44: I honestly do not think so. I  
23 would understand and be very respectful of you not wanting  
24 me on the jury because of that relationship.

25 MR. HATCH: Thanks for your honesty.



1 THE COURT: Anything, counsel?

2 MR. BRENNAN: No.

3 THE COURT: Thank you, Ms. XXXXX.

4 How many more do you have?

5 THE CLERK: Just one.

6 THE COURT: We'll never get to these. Right now  
7 I'm wondering if it's worth our time to bring another one  
8 in. Would any of you object if we did not have -- which one  
9 is it?

10 THE CLERK: The older lady in the back.

11 THE COURT: Just go ahead and tell her she doesn't  
12 need to come back, okay.

13 THE CLERK: But you can't do your causes until I  
14 come back.

15 THE COURT: If there's any doubt who runs things  
16 around here.

17 Counsel, just so you know, what I'll now do, I'll  
18 tell you those I intend to dismiss for cause. I will tell  
19 you the reason why. After you've heard that, if any of you  
20 want to argue against my decision, I'll give you a chance to  
21 do so. Then I'll give you an opportunity to argue for those  
22 additional dismissals for cause, okay.

23 I would dismiss juror number two because of her  
24 student full-time status. Juror number ten, same problem,  
25 unpaid work, can't miss. Ms. XXXX obviously, because she's

1 pregnant. Juror number 15 because of the employment. Same  
2 for juror number 17, employment. Juror number 18,  
3 employment. Juror number 21, employment.

4 Am I going too fast?

5 MR. HATCH: No.

6 THE COURT: Juror number 30, employment. Juror  
7 number 31, who is a student. Juror number 34 because of his  
8 employment. Juror number 37 because I was concerned with  
9 her answer about having a neighbor. Juror number 38 because  
10 of their student status. Juror number 41 for a number of  
11 reasons, unless someone wants to --

12 MR. HATCH: After the trial I'll share my notes.

13 THE COURT: Juror number 46 because of his  
14 conference, the fact he's got a brother getting married.

15 Again, is there any of those I just gave you that  
16 any of you would like to argue against being dismissed for  
17 cause.

18 MR. HATCH: Not from us, Your Honor.

19 MR. BRENNAN: No.

20 THE COURT: Is there anyone else that you want  
21 dismissed for cause?

22 MR. BRENNAN: I would like to talk about juror  
23 number 22, Your Honor.

24 THE COURT: This is the lady who knows Mr.  
25 Tibbetts from 20 years ago.

1 MR. TIBBETTS: Do you want me to step out?

2 MR. BRENNAN: No, Ryan. My view of that is, from  
3 my own experience in the LDS culture, when people are in the  
4 same ward, they do form a unique and special relationship.  
5 They may not be close personal friends, but there's a tie  
6 that develops. And I think that presents an awkwardness of  
7 its own sorts.

8 THE COURT: Mr. Hatch, do you wish to respond?

9 MR. HATCH: I would say ten years ago, that's  
10 sometime ago.

11 THE COURT: I think it's best that we dismiss  
12 juror number 22 for cause, then. The reason why, I don't  
13 want the possibility that after she serves, it doesn't go  
14 well for Mr. Tibbetts' client, they met on the street, she's  
15 worried what happens if I see him. That's something we  
16 don't need to have.

17 THE CLERK: Was number 34 cause?

18 THE COURT: Yes.

19 MR. HATCH: What number did you say, Sandy?

20 THE COURT: She asked about 34.

21 Is there anyone else who you want to argue should  
22 be dismissed for cause?

23 MR. HATCH: Your Honor, four would be the first  
24 one we have. This woman has got a -- she claims to have  
25 been working 25 years for software developers. She's on my

1 list. She owns IBM stock. I worry about her feeling she  
2 has a financial interest. She had a couple hundred shares.  
3 So I worry about her financial concerns. The computer  
4 system she's working with her employer as well concerns me.  
5 She may be more of an expert than she really is.

6 THE COURT: Response.

7 MR. BRENNAN: We disagree. Three reasons. First,  
8 the mere ownership of IBM stock should not be a  
9 disqualifier. IBM is not a party to the action. Just on  
10 the issue of IBM, the only issue that deals with IBM in this  
11 case is a court decision, not a jury decision. And I am  
12 not -- certainly I know what IBM is trading at. If I did  
13 the math, a couple hundred shares is not a monumental amount  
14 of money in any event.

15 THE COURT: Is there anything in this case that's  
16 going to make it appear to the jurors that the outcome of  
17 the case will affect stock value of IBM?

18 MR. HATCH: As we all know, the follow-up lawsuit  
19 is IBM.

20 THE COURT: Is there anything about that that's  
21 going to have a juror thinking my IBM stock value is going  
22 to be affected by this decision?

23 MR. HATCH: I believe so. I believe they are  
24 going to be challenged. We're going to put on evidence that  
25 Novell received money from IBM, and that's part of it.

1           MR. BRENNAN: Well, whether that evidence is  
2 admitted or not I suppose remains to be seen. Again, IBM is  
3 not a party to the litigation. So even if evidence were  
4 admitted on that subject, the only party that has a  
5 potential liability is Novell and/or SCO on the  
6 counterclaim. So that's a pretty attenuated connection.

7           In terms of employment, what she -- what I heard  
8 her say is that she's aware that the company she works for  
9 has some platforms that use Linux. She has no experience  
10 with Linux. She does not use Linux in her particular  
11 responsibilities. And even if she were a Linux users, Linux  
12 is not on trial here. And so that issue doesn't appear to  
13 be a disqualifier.

14           THE COURT: I will state this: I do not intend to  
15 dismiss for cause jurors simply because they are familiar or  
16 work with Linux. I think that's too attenuated to do that.  
17 I am, however, concerned if the evidence is admitted, you  
18 perhaps will argue it ought not to be, ultimately if I  
19 decide it is, I am worried about jurors who have personal  
20 investments in IBM drawing a connection. I just don't think  
21 it's necessary that we run that risk. So for that reason, I  
22 will dismiss number four.

23           MR. HATCH: Your Honor, number 23, XXXXXX  
24 XXXXXXXX. He's the one we just brought in and talked about  
25 reading about the case. I think the thing that concerns us

1 most about that is, in particular, he talked about the prior  
2 lawsuit before Judge Kimball. Apparently, of all the things  
3 he read about was that Novell had apparently won what he  
4 recalled a two and a half million dollar settlement. The  
5 last thing we want is a jury who is going to go back into  
6 the jury room and Novell won the first round of this. He  
7 seems --

8 THE COURT: The only problem with that is he also  
9 acknowledged he found out that decision was reversed. It,  
10 frankly, could play on either side. Novell won it first.

11 MR. HATCH: We're all playing -- we're all playing  
12 a guessing game in this whole process, I agree.

13 MR. BRENNAN: He also said he learned more about  
14 the case in the Court's limited introduction than he did in  
15 any article that he read. Nothing that the Court disclosed  
16 today would indicate a prejudice or an interest one way or  
17 another, it was a neutral description, and he said he  
18 learned more that way.

19 I do think that he didn't read any of the blogs or  
20 other sites that are following the case that may have said  
21 something -- I'll use the term more insightful or more  
22 weighted on one side or the other. Wikipedia material has  
23 never been cited as a site. That's the site that's been  
24 following the case, like others. I don't think we heard  
25 anything from him that suggests he would be prejudiced or

1     biased, no inquiries, nothing I learned would swing me one  
2     way or the other.

3                 MR. HATCH: He's also the one we talked to. For  
4     sure he's like the most likely to go on line, I know.

5                 THE COURT: But I also think he was told by the  
6     Court your instincts were good. His embarrassed reaction to  
7     that would tell me that he's not going to because of what he  
8     now knows. He can go either way.

9                 I'm surprised both of you aren't saying let's kick  
10    him off to make certain. If you're going to argue against  
11    it, I'm going to keep him on. He was very sincere in saying  
12    he has no prejudice, no bias, and I'm just going to have to  
13    deny your request. Okay.

14                MR. SINGER: Lodge an objection to that.

15                THE COURT: Your objection is certainly noted.

16                Anyone else, Mr. Hatch?

17                MR. HATCH: Yeah, 26. Twenty-six, this is the one  
18    we just had in. She seemed like a nice lady. She spent the  
19    whole morning talking about, constantly, her sons and her  
20    husband. And I do have some concern. They talked about  
21    this particular dispute. They talked about working on  
22    Linux. And she seems not terribly knowledgeable, but also  
23    seems terribly easily influenced. I'm somewhat concerned  
24    about her family being involved.

25                THE COURT: I would share that concern. I don't

1 think she sits here today with any preconceived notion. The  
2 temptation to discuss it with her husband and son, them to  
3 discuss it with her once they found out this is the case.

4 MR. BRENNAN: It's not enough to disqualify her.  
5 I think these jurors are going to be admonished not to  
6 discuss the case. She said that herself, she would be very  
7 careful. My concern is that any one of the jurors could  
8 fall into this rubic --

9 THE COURT: Well, I think she's different because  
10 of her constant reference to her son and husband's business,  
11 and so on. I think, out of an abundance of caution, because  
12 my fear is she's going to be somehow influenced by them  
13 during the course of this trial, whether inadvertent or  
14 advertent, I'll dismiss her for cause, number 26.

15 Mr. Hatch, anyone else?

16 MR. HATCH: The only one left is number 44, who  
17 just came in. She's the one with the husband who interned  
18 at Novell. Sounds like, overdramatically, for the record, a  
19 financial burden. He worked for a year there. Also read  
20 about the case, although she didn't seem to have a ton of  
21 knowledge about it.

22 THE COURT: Mr. Hatch, I heard nothing that would  
23 disqualify her. To the contrary, I think she probably would  
24 be a very good juror.

25 MR. HATCH: The only thing I would add, she said



1 at the end, I would understand if you felt I would need  
2 to --

3 THE COURT: I think she would like to get off.  
4 She didn't want to miss her teaching. I won't dismiss her.

5 Let me go through the list once more so we all  
6 have the same list. It will be noted on the blue sheet that  
7 will be handed back and forth to you. Let's make certain  
8 she has the right list.

9 Those who are already dismissed for cause will be  
10 jurors number two, four, ten, 11, 15, 17, 18, 21, 22, 26,  
11 30, 31, 34, 37, 38, 41 and 46. All right.

12 Will you go find out about number 36, Tom.

13 Maybe you better do that. Can you go find Mr.  
14 XXXXXX, and find out -- he should be in there. Do you  
15 remember what he looks like? Middle aged, balding.

16 You may recall, Mr. XXXXXX, juror 36, indicated he  
17 may have a concern that his mother is seriously ill in  
18 St. George and he has to go down there. Mr. Copeland went  
19 to find out.

20 MR. SINGER: Will we also have a few minutes after  
21 we finish?

22 THE COURT: What we'll do is leave plaintiffs in  
23 here.

24 Ms. Malley, will you take defendants into our  
25 conference room.

1                   How long will you need to discuss this? Ten  
2 minutes?

3                   MR. BRENNAN: Fifteen, if we could.

4                   THE COURT: The jury will be sitting in there, but  
5 that won't hurt. I want to give you enough time. Again,  
6 you each get three. And plaintiffs will go first. When Ms.  
7 Malley hands you the blue sheet, mark the person you want to  
8 strike. She will hand it back. After defendants have made  
9 their third one, plaintiffs hand it back again.

10                  If this was a criminal case, because we had an  
11 alternate, we would have selected 12 jurors and given  
12 another preemptory. It's not. We've checked. I'm  
13 confident you still get three, although we have one  
14 alternate, take the 13.

15                  MR. SINGER: Does that constitute a final waiver,  
16 the three strikes?

17                  MR. ACKER: In the same round, Your Honor?

18                  THE COURT: No, passing, okay.

19                  MR. ACKER: If we were to pass and they hadn't  
20 exercised their preemptories, they could still exercise  
21 another preemptory?

22                  THE COURT: They could, yes. If you passed then.

23                  MR. ACKER: Once you pass, you are done?

24                  THE COURT: Yes.

25                  What did he say?

1           MR. COPELAND: He talked to his sister. She's  
2 fine. He thinks he will be okay.

3           THE COURT: Okay. Is there anything else, then?

4           MR. ACKER: Not on our behalf, Your Honor.

5           THE COURT: After we select the jury, what I will  
6 do is we'll seat them, dismiss the others. I will give them  
7 preliminary instructions. Then we'll excuse them for the  
8 afternoon, okay. I won't read the uncontroverted facts.  
9 I'll do that right before you do your openings. Is that  
10 agreeable to all of you?

11          THE CLERK: Judge, we'll let them come in here and  
12 eat.

13          THE COURT: We'll give you 15 minutes, then.

14          (Recess)

15          (Whereupon, the following proceedings resumed in  
16 the courtroom.)

17          THE COURT: Ladies and gentlemen, thank you for  
18 your patience. This took a little bit longer than we  
19 expected, but we're almost through. I indicated earlier  
20 this morning that the attorneys in this case have the  
21 opportunity to exercise preemptory challenges, meaning you  
22 can be stricken as a juror without them having to give you  
23 any reason. This process will take a few minutes and it  
24 will involve Ms. Malley handing back and forth a blue sheet  
25 with your names on it. During the course of this, if you

1 find the attorneys looking at you, glaring into your eyes  
2 and trying to remember what it was you said, don't be  
3 nervous. This is just what happens.

4 Ms. Malley, if you would.

5 Ladies and gentlemen, Ms. Malley is now going to  
6 read the names of the 13 jurors. She will also, with that  
7 name, give you a number. And those of you whose names are  
8 called, please pay attention to the number because that will  
9 be your juror number for purposes of sitting in the juror  
10 box with juror number one up at the top on the right-hand  
11 side through six, and then juror number seven on the bottom  
12 right through juror 13.

13 After your names are read, if you will please make  
14 your way forward and sit in the juror box. As soon as we  
15 have all of them seated, we'll be able to dismiss the rest  
16 of you.

17 THE CLERK: Jury number one is XXXX XXXXXX, number  
18 two is XXXXXX XXXXX, number three is XXXXXXXX XXXXXXXX, number  
19 four is XXXXXX XXXXXXXX, number five is XXXXXXXX XXXXXXXX,  
20 number six is XXXXX XXXXXXXX, number seven is XXXXXX XXXX,  
21 number eight is XXXXX XXXXXXXX, number nine is XXXXXX  
22 XXXXXXXX, number ten is XXXXXXXX XXXXXXXX, number 11 is XXXXXXXX  
23 XXXXX, number 12 is XXXX XXXXXXXX, number 13 is XXXXXXXX  
24 XXXXXXXX.

25 THE COURT: Can I get those of you whose names

1     were read to please come and sit in the jury box.

2             All right. Ladies and gentlemen, as for the rest  
3     of you, I again want to express gratitude to you for being  
4     here and participating in this process. It was important  
5     that we have all of you here so that we may select the best  
6     jury we could. You may now be excused. You go with our  
7     gratitude. Thank you.

8             MR. HATCH: May we, Your Honor?

9             THE COURT: If you would, please.

10            Ladies and gentlemen of the jury, I'm going to ask  
11     you all to now please stand and raise your right hand. Ms.  
12     Malley is going to give you an oath, which I want you to  
13     listen to very carefully because it does dictate how you are  
14     to conduct yourselves as jurors during this trial.

15            If you can affirm, please say yes at the end of  
16     it.

17            (Jury sworn)

18            THE COURT: Ladies and gentlemen, what we're now  
19     going to do is I'm going to give you some brief instructions  
20     that are intended to outline for you how you are to conduct  
21     yourselves as jurors during the course of trial and also to  
22     give you some indication of what will transpire during the  
23     trial. After I've done this, you'll be excused. In the  
24     jury room there will be some refreshments for you, but then  
25     you will be done for the day. If for some reason you don't

1 want those refreshments, that will be fine. You are not  
2 obligated to eat anything. Okay.

3 Ladies and gentlemen, it will be your duty to find  
4 from the evidence what the facts are. You, and you alone,  
5 are the judges of the facts. You will then have to apply to  
6 those facts the law as the Court will give it to you. You  
7 must follow that law whether you agree with it or not.

8 Nothing the Court may say or do during the course  
9 of the trial is intended to indicate nor should be taken by  
10 you as indicating what your verdict should be.

11 Justice through trial by jury must always depend  
12 upon the willingness of each individual juror to seek the  
13 truth as to the facts from the same evidence presented to  
14 all the jurors and to arrive at a verdict by applying the  
15 same rules of law as given in the instructions of the Court.

16 The evidence from which you will find the facts  
17 will consist of the testimony of witnesses, documents and  
18 other things received into the record as exhibits, and any  
19 facts the lawyers agree or stipulate to, or that the Court  
20 may instruct you to find.

21 Certain things are not evidence and must not be  
22 considered by you. I will list them for you now.

23 First, statements, arguments and questions by  
24 lawyers are not evidence.

25 Second, objections to questions are not evidence.

1 Lawyers have an obligation to their clients to make an  
2 objection when they believe evidence being offered is  
3 improper under the rules of evidence. You should not be  
4 influenced by the objection or by the Court's ruling on it.  
5 If the objection is sustained, ignore the question. If it  
6 is overruled, treat the answer like any other. If you are  
7 instructed that some items of evidence is received for a  
8 limited purpose only, you must follow that instruction.

9 Third, testimony that the Court has excluded or  
10 told you to disregard is not evidence and must not be  
11 considered.

12 And, fourth, anything you may have seen or heard  
13 outside of the courtroom is not evidence and must be  
14 disregarded. You are to decide this case solely on the  
15 evidence presented here in the courtroom.

16 This is a civil case. Plaintiff has the burden of  
17 proving its case by what is called the preponderance of the  
18 evidence. That means plaintiff has to produce evidence  
19 which, considered in the light of all the facts, leads you  
20 to believe that what plaintiff claims is more likely true  
21 than not. To put it differently, if you were to put  
22 plaintiff's and defendant's evidence on opposite sides of  
23 the scales, plaintiff would have to make the scales tip  
24 somewhat on its side. If plaintiff fails to meet this  
25 burden, the verdict must be for defendant.

1           Defendant has also brought a claim for relief  
2   against plaintiff called a counterclaim. On this claim,  
3   defendant has the same burden of proof that plaintiff has on  
4   its claim.

5           Those of you who have sat on criminal cases will  
6   have heard of proof beyond a reasonable doubt. That  
7   requirement does not apply to a civil case and you should  
8   therefore put it out of your mind.

9           In this particular civil case, one of the elements  
10   of the claims made by the parties has a different burden of  
11   proof called clear and convincing evidence. That means the  
12   party making those claims has a higher burden than  
13   preponderance of the evidence. But it does not require  
14   proof beyond a reasonable doubt. Clear and convincing  
15   evidence is evidence that shows it is highly probable that  
16   what is claimed is true. It is evidence that produces in  
17   your mind a firm belief as to the facts at issue.

18           For such evidence to be clear and convincing, it  
19   must at least have reached the point where there remains no  
20   substantial doubt as to the truth or correctness of the  
21   claim based upon the evidence. I will instruct you further  
22   after you hear the evidence which element of the parties'  
23   claims requires this heightened burden of proof.

24           The jury is the sole judge of the credibility of  
25   the witnesses and the weight to be given their testimony.



1 You should take into consideration their demeanor upon the  
2 witness stand, their apparent intelligence or lack of  
3 intelligence, their means of knowledge of the facts  
4 testified to, the interest, if any, which any witness may  
5 have in the outcome of this trial, the prejudice or motives,  
6 or feelings of revenge, if any, which have been shown by the  
7 evidence. In so doing, you may take into consideration all  
8 the facts and circumstances in the case and give such weight  
9 as you think the same are entitled to, in light of your  
10 experience and knowledge of human affairs.

11 During the trial it may be necessary for me to  
12 talk with the lawyers out of your hearing, either by having  
13 a bench conference here while you are present in the  
14 courtroom, or by calling a recess. Please understand that  
15 while you will be waiting, we are working. The purpose of  
16 these conferences is to decide how certain evidence is to be  
17 treated under the rules of evidence and to avoid confusion  
18 and error. We will, of course, do what we can to keep the  
19 number and length of these conferences to a minimum.

20 Next, a few words about your conduct as jurors. I  
21 want you to pay particular attention to what I am about to  
22 say to you.

23 First, I instruct you that during the trial you  
24 are not to discuss the case with anyone, including fellow  
25 jurors, or permit anyone to discuss it with you. Until you

1 retire to the jury room at the end of the case to deliberate  
2 on your verdict, you simply are not to talk about this case.  
3 I will stress that means family, friends, neighbors,  
4 strangers on the street. You just simply are not to discuss  
5 the case.

6 Not talking about this case means not talking  
7 about it in any way, including by Internet, e-mail, text  
8 message and instant communication devices or services, such  
9 as cell phones, Blackberries, iPhones, or social networking  
10 Web sites, such as Facebook, Twitter, My Space, LinkedIn,  
11 YouTube, and so on.

12 Second, do not read or listen to anything touching  
13 on this case in any way. Do not watch or listen to any news  
14 programs or reports concerning this trial on television or  
15 on the radio, and do not read any news accounts of this  
16 trial in a newspaper, on the Internet, or on any instant  
17 communication device, including, again, Facebook, Twitter,  
18 and so on. If anyone should try to talk to you about this  
19 case, bring it to my attention immediately.

20 Third, do not do any research or make any  
21 investigation about this case on your own.

22 Finally, do not form any opinion until all of the  
23 evidence is in. Keep an open mind until you start your  
24 deliberations at the end of the case.

25 The Court will permit jurors to take notes during

1 the course of this trial. But if you do, leave them in the  
2 jury room when you leave at night. And, remember, they are  
3 for your personal use. I will note that notebooks will be  
4 made available to you, so you don't need to bring your own.

5           You, of course, are not obligated to take notes.  
6 If you do not take notes, you should not be influenced by  
7 the notes of another juror, but rely upon your own  
8 recollection of the evidence.

9           Notetaking must not be allowed to interfere with  
10 the ongoing nature of the trial or distract you from what  
11 happens here in court. Notes taken by any juror, moreover,  
12 are not evidence in the case and must not take precedence  
13 over the independent recollection of the evidence received  
14 in the case. Notes are only an aid for recollection and not  
15 entitled to any greater weight than actual recollection or  
16 the impression of each juror as to what the evidence  
17 actually is. Any notes taken by any juror concerning this  
18 case should not be disclosed to anyone other than a fellow  
19 juror.

20           At the end of the trial you must make your  
21 decision based on what you recall of the evidence. You will  
22 not have a transcript of the trial. I urge you to pay close  
23 attention to the testimony as it is given.

24           The trial will begin tomorrow morning. At that  
25 time each side will make an opening statement. An opening

1 statement is neither evidence nor argument; it is an outline  
2 of what that party intends to prove, offered to help you  
3 follow the evidence.

4 Next, plaintiff will present its witnesses and  
5 defendant may cross-examine them. Then defendant will  
6 present its witnesses and plaintiff may cross-examine them.

7 At the close of the evidence, the Court will give  
8 you instructions on the law, after which the attorneys will  
9 make their closing arguments to summarize and interpret the  
10 evidence for you.

11 You will then retire to deliberate on your  
12 verdict.

13 Ladies and gentlemen, I now will ask Ms. Malley to  
14 assist you into the jury room. Again, as I indicated, there  
15 should be some light refreshments. We'll begin promptly at  
16 8:30 in the morning. I ask that you please make certain  
17 you're all here well in advance of the 8:30 hour so we do  
18 not have to wait for any late juror. And I want you to pay  
19 particular attention to the fact that I have now instructed  
20 you on your conduct both in the courtroom and in the jury  
21 room and outside. In the morning I will ask you whether or  
22 not you have complied with those things that the Court has  
23 instructed you to do and those that you are not to do.

24 Ms. Malley, if you would please assist the jury  
25 into the jury room.

1 (Jury excused)

2 THE COURT: Counsel, let me give you a couple of  
3 brief rulings on those issues that were raised earlier  
4 today. First of all, the Court will presume that the  
5 minutes of the Novell board meeting will be authenticated by  
6 a witness as a business record. Based on those  
7 presumptions, the Court will allow you to use it in your  
8 opening based upon the assumption it will then be  
9 subsequently admitted into evidence.

10 As to the reference to the copyright filings by  
11 defendant, the Court will allow you to use it. The Court  
12 has again reviewed the authorities and does not believe it  
13 is privileged, and therefore it will be permitted. You may  
14 do so.

15 Who will be making your opening tomorrow, by the  
16 way?

17 MR. SINGER: Your Honor, I will be doing the  
18 principal part of the opening and then turning it over to  
19 Mr. Hatch.

20 THE COURT: All right.

21 MR. BRENNAN: Your Honor, I will be making the  
22 entire presentation for Novell.

23 THE COURT: Thank you, Mr. Brennan.

24 Counsel, do any of you have -- let me -- one other  
25 thing. I'm going to presume that one or both of you want to

1     invoke the exclusionary rule and therefore the witnesses  
2     will be out of the courtroom until they are called?

3             MR. BRENNAN: Yes, Your Honor. In fact, I think  
4     at the pretrial conference we agreed that shall be the  
5     order.

6             THE COURT: Is there anything else, then, we need  
7     to deal with here today?

8             MR. SINGER: I do not believe so, Your Honor.

9             THE COURT: Mr. Singer, thank you.

10            Mr. Brennan, do you have anything?

11            MR. BRENNAN: Yes, Your Honor, just a question  
12     about the scope of the exclusionary rule. We would  
13     understand likely that that would apply to some of the blogs  
14     that might be running on this case and providing commentary.  
15     Would that be in the Court's mind as well? In other words,  
16     there could be commentaries that are on line that would be  
17     reporting the testimony of the witnesses on a daily basis.

18            THE COURT: To me, the exclusionary rule means you  
19     don't have witnesses in the courtroom. What is it you are  
20     asking me, whether or not those witnesses will be permitted  
21     to --

22            MR. BRENNAN: They ought not be reviewing  
23     materials that would be reporting on --

24            THE COURT: I would certainly agree that would be  
25     included with the exclusionary rule.

1 Mr. Singer.

2 MR. SINGER: We agree, Your Honor.

3 THE COURT: Will you please make certain that your  
4 witnesses are so informed. I do appreciate you bringing  
5 that to our attention.

6 MR. BRENNAN: We've done that with our witnesses,  
7 Your Honor.

8 THE COURT: Good.

9 Tomorrow on your openings, counsel, I will keep  
10 track of the time. I will inform you when you get close.  
11 All right.

12 MR. SINGER: Your Honor, one question. Do you  
13 have any restrictions on moving around the courtroom during  
14 opening?

15 THE COURT: As long as you can be heard, Mr.  
16 Singer. That's the only thing.

17 MR. SINGER: Thank you.

18 THE COURT: All right. Counsel, we do have  
19 hearings this afternoon, so I would ask that we clear the  
20 tables to the extent you can.

21 And if there is nothing else, we'll be in recess  
22 until 8:30 tomorrow morning.

23 (Whereupon, the trial was continued to Tuesday,  
24 March 9, 2010 at 8:30 a.m.)

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1 C E R T I F I C A T E

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4 I hereby certify that the foregoing matter is

5 transcribed from the stenographic notes taken by me and is a

6 true and accurate transcription of the same.

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16 PATTI WALKER, CSR-RPR-CP DATED:  
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