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

NOVELL, INC.

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

**Designations from the
January 22, 2009
Deposition of Brad Silverberg
Played for the Jury on October 19, 2011
and October 26, 2011**


Case No. 2:04-cv-01045 JFM
Honorable J. Frederick Motz

Case Clip(s) Detailed Report
Friday, October 21, 2011, 2:45:15 PM

Novell

 Silverberg, Brad (Vol. 01) - 01/22/2009

1 CLIP (RUNNING 01:31:49.484)

 You were once employed at ...



SILVERBERG 79 SEGMENTS (RUNNING 01:31:49.484)

1. PAGE 9:11 TO 9:18 (RUNNING 00:00:27.800)

11 Q. You were once employed at
 12 Microsoft; is that correct?
 13 A. That's correct.
 14 Q. What was the timeframe that you
 15 worked there?
 16 A. I started at Microsoft in 1990. I
 17 worked full-time until summer the of '97. I
 18 worked part-time until October of '99.

2. PAGE 10:16 TO 11:16 (RUNNING 00:01:18.200)

16 I know you're the vice president
 17 of systems, or you were a vice president in
 18 systems; is that right?
 19 A. I was a vice-president in the systems
 20 division. What time frame again?
 21 Q. '93 through '95. And again,
 22 focusing on around the time of the beginning of
 23 development of Windows or Chicago. Windows 95.
 24 A. I was vice-president in, I think I was
 25 working for Maritz at the time. Previous to that,
 00011:01 it was Ballmer. I'm not sure when Ballmer stopped
 02 being my boss.
 03 Q. Okay.
 04 A. I had Windows 3.0, Windows 3.1. Well,
 05 that was before --
 06 Q. Um-hmm.
 07 A. --Windows For Work Groups, MS DOS
 08 development responsibilities. Then Windows 95 and
 09 then Internet Explorer.
 10 Q. Okay. And what were the, what
 11 was the nature of your job duties during that time
 12 period of '93 through '95, the Windows 95 time
 13 period, if you will?
 14 A. I was the person, head of the group that
 15 developed the product and did the product
 16 management for the product.

3. PAGE 11:18 TO 12:06 (RUNNING 00:00:37.000)

18 How many people reported to you
 19 around that time?
 20 A. That's a good question.
 21 Q. More than ten?
 22 A. Yes. More than ten.
 23 Q. Okay. And you reported to either
 24 Maritz or Ballmer at the time; is that right?
 25 A. I'm pretty sure it was Maritz, but --
 00012:01 Q. Okay.
 02 A. I think Ballmer was up to like '92, but
 03 I'm not sure.
 04 Q. Okay.
 05 A. '95 was definitely Maritz. '93, I'm not
 06 a hundred percent sure.

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4. PAGE 12:18 TO 12:20 (RUNNING 00:00:09.000)

18 Q. I'm going to give you what's
 19 marked as Exhibit 1, which is MS7093049, and it's
 20 a one-page document.

5. PAGE 13:07 TO 13:16 (RUNNING 00:00:14.800)

07 Q. Okay. And do you recognize the
 08 document?
 09 A. No.
 10 Q. Okay. Do you have any
 11 recollection of this e-mail chain?
 12 A. No.
 13 Q. The very top part of that is from
 14 Brad Silverberg to David C-O-L and Paul M-A. Do
 15 you see that?
 16 A. Yes, I do.

6. PAGE 14:15 TO 15:17 (RUNNING 00:00:59.000)

15 Q. Sure. Do you know what a shell
 16 is?
 17 A. Yes.
 18 Q. Okay. Can you explain to me what
 19 it is?
 20 A. A shell is a user interface for Windows.
 21 Q. Okay. In the 1993 time period,
 22 the time period of this e-mail, was there a debate
 23 within Microsoft, whether or not to ship a shell
 24 in Microsoft office, or to ship the same shell in
 25 Windows 95?
 00015:01 A. I don't agree with that
 02 characterization.
 03 Q. Okay. Do you remember --
 04 A. Because it wasn't an either/or.
 05 Q. Okay.
 06 A. There was never an either/or discussion.
 07 Q. Okay. What was the nature of
 08 discussion, as you remember?
 09 A. There was always to be a shell in
 10 Windows.
 11 Q. Okay.
 12 A. There was a shell in Windows 3.0, 3.1,
 13 Windows 95. A shell is an inherent part of the
 14 operating system. I have a vague recollection
 15 that there was a discussion to also ship another
 16 shell in Office, but as you characterize the
 17 question, that never occurred.

7. PAGE 16:01 TO 18:02 (RUNNING 00:02:20.900)

00016:01 In that section of the e-mail
 02 that you wrote, it states, "I" -- "In addition, I
 03 fear that if we are in Shell Wars, it will lead to
 04 the view that the shell is just an app, not an
 05 integral part of the system." Do you see that?
 06 A. Yes.
 07 Q. What did you mean by Shell Wars?
 08 A. I don't recall it in this particular
 09 e-mail.
 10 Q. Okay. Do you have any
 11 recollection of anyone using the term "Shell
 12 Wars", other than you?
 13 A. I don't remember that term, no.
 14 Q. Okay. So as you sit here, you
 15 have no recollection of what the basis for that
 16 comment is in your e-mail; is that right?

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17 A. That's not what I said, sir.
 18 Q. Okay. Well, what did you say?
 19 A. I don't recall this particular e-mail.
 20 I don't recall the term, "Shell Wars".
 21 As I stated, Windows, in my view
 22 from Windows, was always that Windows is going to
 23 produce a shell.
 24 Q. Um-hmm.
 25 A. That the shell is an integral part of
 00017:01 the operating system, not an application above the
 02 shell, that there will be a whole plethora of
 03 shells to choose from, from multiple vendors or
 04 multiple sources. That I view the shell as the
 05 inherent part of the operating system.
 06 Q. Okay. Were you opposed to
 07 shipping a shell in Office for Windows 95?
 08 A. Yes.
 09 Q. Why were you?
 10 A. For the reasons I just stated.
 11 Q. Okay. In the second paragraph of
 12 that e-mail you wrote, "If the shell is now viewed
 13 as an app rather than as part of the system, then
 14 it devalues Windows itself and makes it easy to
 15 clone." Do you see that?
 16 A. Yes.
 17 Q. And that was your view at the
 18 time?
 19 A. I guess so.
 20 Q. And what was the basis for your
 21 view that if the shell is viewed as an app, rather
 22 than as part of the system, then it devalues
 23 Windows itself and makes it easy to clone?
 24 A. Well, I think the shell is an inherent
 25 part of the Windows experience. If you take that
 00018:01 away, you're just left with a bag of APIs, that I
 02 think has lower value to the customer.

8. PAGE 18:03 TO 18:11 (RUNNING 00:00:26.000)

03 Q. Okay. But the debate that
 04 existed at the time, was not to take the shell
 05 away from Windows 95, it was whether or not to
 06 ship a shell in Office 95; is that right?
 07 A. I don't know exactly what the debate
 08 was. Our plan was to ship a shell in Windows 95,
 09 and apparently, there was some discussion to, at
 10 least, consider shipping a shell in Office. No
 11 shell ever shipped in Office.

9. PAGE 18:16 TO 21:11 (RUNNING 00:03:00.000)

16 Q. Okay. The last paragraph of your
 17 e-mail says, "Our competitors are going to do
 18 everything they can to fragment Windows." You see
 19 that?
 20 A. Yes.
 21 Q. Okay. When you wrote "our
 22 competitors", to whom were you referring?
 23 A. Operating system competitors.
 24 Q. Like who?
 25 A. Whoever was producing operating system
 00019:01 competitor to Windows.
 02 Q. Would that include IBM?
 03 A. It would include parts of IBM, but other
 04 parts were developing applications. So it would
 05 include parts of Apple, but other parts were
 06 including, or developing applications that would

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07 include Novell, while they were developing
 08 operating systems.
 09 Q. Okay. And what did you mean when
 10 you wrote, "Our competitors are going to do
 11 everything they can to fragment Windows"?
 12 A. Well, by fragmenting, just that's a
 13 competitive tactic, is to fragment Windows. Have
 14 there be multiple versions of Windows, or multiple
 15 flavors, or different ways to look at Windows.
 16 And by fragmenting Windows, I think that would
 17 devalue the product.
 18 Q. Okay. Were you, at the time,
 19 referring to any specific version of Windows?
 20 A. Not that I recall.
 21 Q. Okay. You then wrote, "They will
 22 build their own Middleware to claim API ownership.
 23 You see that?"
 24 A. Yes.
 25 Q. What's Middleware?
 00020:01 A. Middleware would be other, I would
 02 consider operating system software, that would
 03 provide APIs that applications would be developed
 04 to. So the interface that applications get
 05 written to, would, you know, either get written to
 06 the operating system or to Middleware or both.
 07 Q. Okay. Did Middleware represent a
 08 threat to the Microsoft Windows franchise?
 09 A. In my belief, yes.
 10 Q. Why?
 11 A. For the reasons I just stated.
 12 Q. Okay. Any other reasons?
 13 A. There could be. Not that I recall at
 14 the moment.
 15 Q. Okay. You wrote, "to claim API
 16 ownership." What was API ownership?
 17 A. That would mean what the APIs, that
 18 applications would be writing to.
 19 Q. Okay. And I used the term API
 20 without introducing it in the record, what's an
 21 API?
 22 A. Application program interface.
 23 Q. And an operating system exposes a
 24 number of APIs; is that right?
 25 A. An operating system exposes APIs that
 00021:01 applications are written to, to provide the
 02 functionality of that application.
 03 Q. Okay. And Middleware also
 04 exposed APIs; is that right?
 05 A. Middleware also provides a platform,
 06 which exposes APIs, that applications are written
 07 to.
 08 Q. Okay. In the phrase "ownership",
 09 what does that mean?
 10 A. As I -- it's the APIs that applications
 11 are written to.

10. PAGE 22:04 TO 22:09 (RUNNING 00:00:12.000)

04 Q. All right. Let's go to Exhibit
 05 2.
 06 (Whereupon, Silverberg-2 is
 07 received and marked for identification.)
 08 Q. Which is an e-mail from you to
 09 Mr. Allchin, MS7093163?

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11. PAGE 22:11 TO 24:16 (RUNNING 00:02:05.500)

11 Q. Do you recall this e-mail?
12 A. No, I don't.
13 Q. Okay. Any reason to doubt that
14 you wrote the top portion of this e-mail from you
15 to Mr. Allchin?
16 A. No.
17 Q. Okay. The subject of the e-mail
18 is titled, Chicago UI design preview. Do you see
19 that?
20 A. Yes.
21 Q. Do you know what the initials UI
22 refer to?
23 A. Yes.
24 Q. What?
25 A. User interface.
00023:01 Q. Okay. Did you attend a Chicago
02 user interface design preview in or around
03 December of 1993?
04 A. I don't recall.
05 Q. Okay. Do you recall writing a
06 memo to Mr. Allchin providing the high points of
07 Chicago user interface design preview?
08 A. No.
09 Q. Did Microsoft, in the development
10 of Chicago, provide conferences where ISVs
11 attended and Microsoft provided the information
12 about its Chicago plans?
13 A. Yes.
14 Q. Okay. And I just used the term
15 ISVs again, without introducing it. You know what
16 ISVs are, right?
17 A. Yes.
18 Q. Okay. And that's independent
19 software vendor?
20 A. Yes.
21 Q. You wrote in this e-mail, "They
22 'really' want extensibility." Do you see that?
23 A. Yes.
24 Q. Do you have any recollection of
00024:01 ISVs, telling you at a design preview, regardless
02 of whether you remember the particular preview,
03 that ISVs, told you they really wanted
04 extensibility?
05 A. No.
06 Q. What does the phrase
07 "extensibility" mean, as you've written it there?
08 A. I don't recall.
09 Q. Okay. Do you have a general
10 understanding what the term extensibility means in
11 the context of operating systems?
12 A. Yes.
13 Q. And what does it mean?
14 A. Well, they want the ability to provide
15 their own enhancements through a framework that
16 the operating system provides to a particular
component.

12. PAGE 24:20 TO 25:09 (RUNNING 00:00:33.800)

20 Do you recall any questions by
21 ISVs, regarding the ability to integrate into the
22 Chicago shell?
23 A. No.
24 Q. Was the Chicago shell also known
25 as the Explorer?

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00025:01 A. Ultimately became that.
 02 Q. Okay.
 03 A. It wasn't known as that, at that point,
 04 I don't believe.
 05 Q. Okay. At some point in time,
 06 people referred to the shell as the Explorer?
 07 A. Yes.
 08 Q. Okay.
 09 A. Windows Explorer.

13. PAGE 25:13 TO 27:21 (RUNNING 00:02:19.700)

13 Do you recall any requests by
 14 ISVs, for Microsoft to provide the ability for
 15 them, the ISVs, to integrate into the Explorer?
 16 A. No.
 17 Q. Okay. As you sit here today, do
 18 you have any understanding what that sentence
 19 means, "They really want extensibility"?
 20 A. Let me say it's important to say Windows
 21 Explorer, because there were two explorers.
 22 Q. No. And I --
 23 A. When you say explorer, that's ambiguous,
 24 and could then be, later mean something different.
 25 So I would ask that you be unambiguous in your,
 00026:01 your terminology.
 02 Q. Okay. And I'll do my best. I
 03 appreciate the clarification, because I wasn't
 04 even thinking, but you're talking about Internet
 05 Explorer?
 06 A. There was also Internet Explorer and
 07 some people later would call that Explorer.
 08 Q. Okay.
 09 A. And I wouldn't want the two to then be
 10 confused, when we're talking about one, and have
 11 it apply to the other.
 12 Q. That's fair. That's fair. I'll
 13 do my best. If I mess up and say the Explorer, I
 14 intend to mean the Windows Explorer.
 15 A. Okay.
 16 Q. Unless I say Internet Explorer,
 17 you can assume I mean the Windows Explorer.
 18 A. Okay.
 19 Q. Okay. At the end of that
 20 paragraph you wrote: "What's more, they were
 21 afraid and angry that Microsoft would use the
 22 hooks for its own purposes, (apps, mail, etc), but
 23 not provide to ISVs. This is a very hot button."
 24 Do you see that?
 25 A. Yes.
 00027:01 Q. Do you have any understanding
 02 what the basis for that, those two sentences was?
 03 A. Well, there was a general concern by
 04 ISVs, that whatever Microsoft applications had
 05 access to, they would also have access to. Now, I
 06 think that reflects that.
 07 Q. Okay. Do you have any
 08 recollection of this specific episode, where ISVs
 09 were afraid and angry that Microsoft would use the
 10 hooks for their own purposes?
 11 A. This specific episode, no.
 12 Q. Okay. Do you have any
 13 understanding what the phrase, "the hooks" means
 14 in the context of this e-mail?
 15 A. APIs.
 16 Q. Okay. Any particular APIs?
 17 A. From this context, extensibility APIs,

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18 to the Chicago UI.
 19 Q. Have you heard the term "name
 20 space extensions" before?
 21 A. This morning.

14. PAGE 27:25 TO 28:24 (RUNNING 00:01:07.600)

25 counsel, because I'm not permitted to. Before
 00028:01 today, did you have an understanding what the
 02 phrase "name space extensions" means?
 03 A. When it was mentioned to me today, I had
 04 a vague recollection from 15, 18 years ago,
 05 however many years ago that term existed.
 06 Q. Okay. Do you have any
 07 recollection of ISVs, asking for the ability to
 08 use name space extensions to integrate into the
 09 Windows Explorer?
 10 A. No recollection.
 11 Q. Okay. Do you have any
 12 recollection whether or not your paragraph here in
 13 this e-mail relates to name space extensions?
 14 A. I don't know.
 15 Q. Okay. Do you have any
 16 recollection, beyond what we have talked about,
 17 relating to this paragraph?
 18 A. That's a very broad statement. Do I
 19 have any recollection regarding what?
 20 Q. Regarding the basis for what you
 21 wrote here, about ISVs really want extensibility
 22 and they're afraid and angry that Microsoft would
 23 use the hooks for its own purposes, and this was a
 24 very hot button?

15. PAGE 29:02 TO 30:15 (RUNNING 00:01:28.000)

02 A. That's too broad of a question to
 03 answer. As I explained previously, there was a
 04 general concern by ISVs, that, that they have
 05 access to the similar APIs, that Microsoft
 06 applications would have.
 07 Q. Okay. ISVs expressed that
 08 concern to you; is that right?
 09 A. Yes.
 10 Q. Which ISVs?
 11 A. I don't recall.
 12 Q. Do you recall any of them?
 13 A. Not specifically. Not 15, 18 years
 14 later.
 15 Q. Okay. Do you know if Lotus was
 16 one of them?
 17 A. I don't recall.
 18 Q. Do you know if WordPerfect was
 19 one of them?
 20 A. Like I said, I don't recall.
 21 Q. Okay.
 22 A. I don't recall any specific
 23 conversations.
 24 Q. Okay. And do you have any
 25 understanding, what you meant when you wrote,
 00030:01 "this was a very hot button"?
 02 A. Like I say, ISVs, in general, and I
 03 don't recall specific ones, this was a big issue
 04 for them.
 05 Q. Okay. Did you respond to ISVs,
 06 who expressed that concern?
 07 A. I don't recall specifically.
 08 Q. Do you have any general

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09 recollection of how you responded to those ISVs
 10 that expressed that concern?
 11 A. Yes.
 12 Q. What's your general recollection?
 13 A. In general, my position was to provide
 14 them with the same level of access that Microsoft
 15 applications would have.

16. PAGE 30:19 TO 30:20 (RUNNING 00:00:11.999)

19 Q. Let's go to Exhibit 3, which is
 20 MS 0153361 through 62.

17. PAGE 30:22 TO 31:21 (RUNNING 00:00:52.600)

22 Q. Okay. This is an e-mail chain
 23 that started with you on the subject of Novell
 24 nightmare; is that right?
 25 A. Apparently.
 00031:01 Q. Okay any reason to doubt that you
 02 wrote this e-mail?
 03 A. No.
 04 Q. Okay. The subject of the e-mail
 05 is titled, Novell Nightmare. Do you see that?
 06 A. Yes, I do.
 07 Q. Do you know why you chose that
 08 title?
 09 A. No, I don't.
 10 Q. Okay. Do you, having read the
 11 contents of the e-mail, do you have any
 12 understanding why you used the term Novell
 13 Nightmare?
 14 A. Novell was an operating system
 15 competitor at the time, and apparently, I felt we
 16 weren't as effective as we should be in competing
 17 against an operating competitor.
 18 Q. Did you have concerns, at the
 19 time, about the competitive threat that Novell
 20 posted to Microsoft operating system?
 21 A. Yes.

18. PAGE 35:24 TO 36:12 (RUNNING 00:00:35.800)

24 You write, "I also hear, as I'm
 25 sure you do, that Novell is activity considering
 00036:01 some type of merger or acquisition targeted
 02 against us." Do you so that?
 03 A. Yes.
 04 Q. Where did you get that
 05 understanding?
 06 A. Things I'd heard at the time. I don't
 07 recall the specifics.
 08 Q. Okay. What does it mean to have
 09 a "merger or acquisition targeted against us"?
 10 A. Acquiring other components, or being
 11 acquired by another company, to have more broad
 12 based competitive strategy against Microsoft.

19. PAGE 36:16 TO 37:02 (RUNNING 00:00:31.999)

16 You then list out a series of
 17 possibilities.
 18 A. Um-hmm.
 19 Q. Did you view each of those as
 20 potential mergers or acquisitions targeted against
 21 Microsoft?
 22 A. I don't recall the e-mail, so I, so it's
 23 hard to answer that, your question.

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24 Q. Okay. As you look at this e-mail
 25 now, did those possibilities, in your view, appear
 00037:01 to be mergers or acquisitions potentially targeted
 02 against Microsoft?

20. PAGE 37:03 TO 38:12 (RUNNING 00:01:27.999)

03 A. Perhaps. You'd have to ask a specific
 04 question.
 05 Q. Okay. Let's look at Number 2,
 06 Noorda merges with Lotus. You write, "This is the
 07 scariest scenario."
 08 A. Um-hmm.
 09 Q. Did you view that scenario as a
 10 potential merger or acquisition targeted against
 11 Microsoft?
 12 A. Apparently. It says Noorda merges with
 13 Lotus, so apparently, that's true.
 14 Q. Okay. And why did you view that
 15 as the scariest scenario?
 16 A. I don't recall. I don't recall the
 17 e-mail, so.
 18 Q. Okay. Well, do you have any
 19 recollection, based on your experience, and your
 20 time at Microsoft?
 21 A. I don't recall this. I mean, Lotus was
 22 eventually bought by IBM, not by Novell.
 23 Q. Okay. At the time, do you have
 24 any reason to doubt that you considered Noorda or
 25 Novell merging with Lotus to be a scary scenario?
 00038:01 A. No.
 02 Q. Okay. Did you have any concerns
 03 about the potential combination of Notes plus
 04 Netware?
 05 A. I don't recall, but this e-mail says
 06 yes. I don't recall.
 07 Q. Okay. And what is your
 08 recollection of what Notes was, at the time?
 09 A. Notes was a data based e-mail platform
 10 and application.
 11 Q. Okay. And did you view it as a
 12 potential competitor to Windows?

21. PAGE 38:13 TO 40:04 (RUNNING 00:02:03.200)

13 A. I viewed it is a Middleware platform.
 14 It would be a competitor.
 15 Q. Okay. And what was your
 16 understanding of what Netware was, at the time?
 17 A. Netware was a server operating system,
 18 file print service.
 19 Q. Okay. And that was a Novell
 20 product; is that right?
 21 A. That was a Novell product.
 22 Q. Okay. You wrote, "The
 23 combination of Notes plus Netware gives Noorda
 24 control over networking; gives him a strong and
 25 Middleware platform, a place to set new standards
 00039:01 for (cross-platform) application APIs; and a
 02 strong application suite." Do you see that?
 03 A. Um-hmm.
 04 Q. Do you have any understanding of
 05 what the basis for that sentence was?
 06 A. I'm not sure what you mean.
 07 Q. What concerns, if any, did you
 08 have about Novell gaining access to a strong and
 09 growing Middleware platform?

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10 A. As I stated previously, Middleware
 11 platform would be a competitor to Windows.
 12 Q. Okay. And what did you mean, you
 13 wrote, "A place to set new standards for
 14 cross-platform application API"?
 15 A. As a platform, it would develop new
 16 APIs, which would be in competition to Windows.
 17 Q. Okay. And what's a standard as
 18 you use that phrase there?
 19 A. Just new APIs.
 20 Q. Okay.
 21 A. Popular.
 22 Q. Popular APIs are considered
 23 standards?
 24 A. Potentially. Well, standards is a very
 25 loose term.
 00040:01 Q. Okay. Do you have any
 02 understanding of what you meant when you used that
 03 term in this e-mail?
 04 A. Potentially, to be popular.

22. PAGE 40:07 TO 41:01 (RUNNING 00:00:41.500)

07 Did you have concerns about
 08 Novell gaining access to a strong application
 09 suite?
 10 A. Not that I recall, but this e-mail says
 11 that was a concern, at the time, as part of this
 12 paragraph.
 13 Q. Okay. Independent of this
 14 paragraph, do you have any recollection of
 15 concerns about Novell gaining access to a strong
 16 application suite?
 17 A. No.
 18 Q. Okay. Do you recall any
 19 discussions with Microsoft executives regarding
 20 the possibility of Novell gaining access to a
 21 strong application suite?
 22 A. No.
 23 Q. Do you have any reason to doubt
 24 that, at the time, you wrote this e-mail, that was
 25 a concern of yours?
 00041:01 A. No.

23. PAGE 41:04 TO 43:06 (RUNNING 00:02:22.600)

04 You wrote, "Ray can't/doesn't
 05 merge with Lotus, so buys WordPerfect and/or
 06 Borland. Let's say both. He gets his apps suites
 07 as above and wages price war. He gets a server
 08 database (Interbase). He gets some great
 09 development tools for building client-server apps
 10 and thus establishes control over client-server
 11 app development. He gives Novell DOS away, et
 12 cetera as above." Do you see that?
 13 A. Yes.
 14 Q. Do you have any recollection
 15 about concerns of the potential that Novell would
 16 purchase or acquire WordPerfect and/or Borland?
 17 A. Just vague.
 18 Q. Okay. What is your vague
 19 recollection?
 20 A. Just that. I don't recall specific
 21 conversations or anything beyond that.
 22 Q. Okay. Do you have any reason to
 23 doubt that it was a concern of yours at the time?
 24 A. The time, what was the time?

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25 Q. Yes.
 00042:01 A. 1993, July 30th?
 02 Q. Um-hmm.
 03 A. No.
 04 Q. Okay. In fact, Novell did
 05 combine with WordPerfect and Quatrapro; is that
 06 right?
 07 A. So I'm told.
 08 Q. Do you have any recollection of
 09 that combination?
 10 A. Vaguely. I don't recall exactly when it
 11 happened, and I don't believe Novell still owns
 12 them, so I don't know what period of time that
 13 happened and didn't happen.
 14 Q. Okay. Do you have a recollection
 15 of what your reaction was to that combination?
 16 A. No. Because I don't remember when it
 17 happened.
 18 Q. Okay. You have identified here
 19 as one of the scenarios that you were concerned
 20 about, but you have no recollection of that
 21 scenario coming true; is that right, other than as
 22 you said here?
 23 A. Well, I do recall Novell did purchase
 24 WordPerfect and Quatrapro. I don't know what else
 25 from Borland they may have purchased.
 00043:01 Q. Um-hmm.
 02 A. They didn't purchase Borland, which
 03 still exists, and I don't believe they own either
 04 WordPerfect or Quatrapro today, but I don't know
 05 the dates around which either of those entries or
 06 exits happened.

24. PAGE 44:08 TO 45:04 (RUNNING 00:01:22.700)

08 Q. Okay. Do you have any
 09 recollection of anyone at Microsoft expressing a
 10 reaction to that combination?
 11 A. Actually, I do recall my own reaction
 12 that, my own reaction was a confirmation of my
 13 belief that Novell was, you know, stepping up the
 14 competitive elements with Microsoft.
 15 Q. Okay. Do you recall anybody else
 16 expressing that concern?
 17 A. No.
 18 Q. Do you recall any change in the
 19 way Microsoft reacted in its competition with
 20 Novell after the combination?
 21 A. No, we regarded WordPerfect and
 22 Quatrapro as applications, as different from the
 23 operating system.
 24 Q. Okay. Did the fact that Novell,
 25 your operating system competitor after that
 00045:01 acquisition of WordPerfect, have access to an
 02 application suite, did that factor into your
 03 concerns about Novell?
 04 A. No.

25. PAGE 45:14 TO 48:05 (RUNNING 00:03:00.600)

14 Q. Sure. Didn't the Novell
 15 combination with WordPerfect create one of the
 16 scariest scenarios that you were concerned about
 17 in this e-mail?
 18 A. I don't know. We regarded WordPerfect
 19 as an application and compartmentalized
 20 application versus operating system competitors,

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21 as we did with IBM, and as we did with Apple.
 22 Other operating systems that have applications.
 23 Q. Okay. In this scenario, Number
 24 3, you mentioned, "He gets his app suites as above
 25 and wages price war."
 00046:01 A. Um-hmm.
 02 Q. Was that a concern of yours at
 03 the time, that Ray Noorda and Novell got access to
 04 app suites?
 05 A. Perhaps. I don't recall this e-mail.
 06 Q. Okay. Was there anything that
 07 changed your view about your concern about
 08 Novell's access to app suites between 1993 and
 09 1994?
 10 A. Changed my view, not that I recall.
 11 Q. Okay. So if it was a concern in
 12 1993, it would have remained a concern in 1994; is
 13 that right?
 14 A. I can't say.
 15 Q. Why not?
 16 A. Because I don't recall.
 17 Q. But you can't recall anything
 18 that would change your view of your concern about
 19 the access of Novell to an app suite between 1993
 20 and the time that Novell actually did acquire
 21 access to an app suite?
 22 A. But my view was, at the time, was also,
 23 that we compartmentalize between operating systems
 24 applications.
 25 Q. Okay. What is the basis for your
 00047:01 mentioning app suites in both your scenarios
 02 regarding Lotus and WordPerfect?
 03 A. As an operating system developer, we --
 04 it's part of our job to compartmentalize between
 05 operating system competitors and applications and
 06 provide good service to application vendors while
 07 we may be competing with operating system folks at
 08 the same time.
 09 Q. Okay.
 10 A. It may still be a concern of ours, that
 11 our competitors are in a stronger positions, but
 12 doesn't change the way we do business.
 13 Q. Did your competitors access to an
 14 application suite put them in a stronger position?
 15 A. Potentially. Could be weaker, too.
 16 Q. Why would it be potentially a
 17 stronger position?
 18 A. Depending on how they played it, they
 19 could be a bigger, more successful company. They
 20 could integrate between their applications and
 21 their operating systems. They could produce an
 22 alternative platform with applications to support
 23 driving that platform success. They could also
 24 make them weaker. They could dilute their focus,
 25 and do a worse job executing on both.
 00048:01 Q. Okay. And the concerns about
 02 making them stronger, were those the concerns that
 03 you had back in 1993, and 1994?
 04 A. Those were the concerns of the paranoid
 05 competitor part of me.

26. PAGE 48:17 TO 48:24 (RUNNING 00:00:18.300)

17 Q. Okay. You write in the second to
 18 last paragraph of your e-mail, "If one of these
 19 scenarios happens, especially 2 or 3, then
 20 Microsoft no longer has the luxury to putz around

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21 as we are now, uncoordinated, inefficient,
22 building overlapping products with unclear
23 missions." Do you see that?
24 A. Yes.

27. PAGE 49:07 TO 49:19 (RUNNING 00:00:38.000)

07 Q. Why was it your view, at the
08 time, that Microsoft would no longer have the
09 luxury to putz around if Novell merged with Lotus
10 or WordPerfect?
11 A. My view, at the time, was that Microsoft
12 was not doing a very effective job on the server
13 operating system side, and that the potential of a
14 stronger Novell would not give the server group
15 the opportunity to continue to execute, and I
16 think, was an ineffective way.
17 Q. Do you have any recollection of a
18 reaction to this e-mail?
19 A. No.

28. PAGE 49:22 TO 49:22 (RUNNING 00:00:03.366)

22 Q. Let's go to Exhibit 4, which is,

29. PAGE 50:09 TO 50:12 (RUNNING 00:00:10.999)

09 than one page, and my question for this particular
10 document is going to relate to the top part, the
11 note from Bob K-R, to which you responded
12 "paranoid runs deep"?

30. PAGE 50:13 TO 51:24 (RUNNING 00:01:16.000)

13 A. Okay.
14 Q. Who was Bob K-R?
15 A. Bob K-R is Bob Kruger.
16 Q. Okay. This is an e-mail chain
17 that starts -- well, strike that.
18 This e-mail chain involves you
19 and Mr. Kruger and a number of others; is that
20 right?
21 A. Apparently.
22 Q. Okay. Do you have any
23 recollection of this e-mail chain.
24 A. No.
25 Q. Okay. In the second e-mail down
00051:01 from the top, Mr. Kruger writes in the second
02 paragraph, "They think we're out to cheat them,
03 we, of course, did this with WFW (in their eyes).
04 We also haven't given them Chicago code, and we
05 changed NT APIs at the last minute and didn't tell
06 them." Do you see that?
07 A. Yes.
08 Q. And you responded to that with,
09 "paranoia runs deep."
10 A. Um-hmm.
11 Q. Do you see that?
12 A. I see that.
13 Q. Do you have any recollection of
14 Microsoft changing NT APIs, at the last minute
15 without telling them?
16 A. No.
17 Q. Okay.
18 A. NT was not my responsibility.
19 Q. Okay. Do you recall any
20 discussions with anyone at Microsoft about
21 Microsoft changing APIs at the last minute for NT?

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22 A. No, NT, as I mentioned, was not my
 23 responsibility.
 24 Q. Okay.

31. PAGE 52:16 TO 52:18 (RUNNING 00:00:08.800)

16 Q. Mr. Silverberg, I'm going to give
 17 you the next in order, which is MS5043511 through
 18 12. Unlike the others I gave you, this is not

32. PAGE 52:25 TO 53:02 (RUNNING 00:00:03.000)

25 Q. Okay. Do you have any
 00053:01 recollection of this e-mail chain?
 02 A. No.

33. PAGE 53:06 TO 55:06 (RUNNING 00:02:30.700)

06 What was Capone?
 07 A. I don't know.
 08 Q. Was it a mail client, does that
 09 refresh your recollection?
 10 A. No.
 11 Q. Okay.
 12 A. I heard the term this morning, and I
 13 couldn't place what it was.
 14 Q. Okay. Do you have any
 15 recollection of a time, in which Microsoft was
 16 unsure of whether or not it would publish APIs
 17 that Capone used?
 18 A. No.
 19 Q. Were you, do you have any
 20 recollection of a situation in which Microsoft was
 21 unsure whether to publish APIs that any of its
 22 applications used?
 23 A. That's a very broad statement. Can you
 24 state that again?
 25 Q. It's intentionally broad. Do you
 00054:01 have any recollection, in this 1993 time period,
 02 of Microsoft considering whether or not it had to
 03 publish, or should publish, APIs that Microsoft
 04 applications relied upon?
 05 A. I don't recall specific conversations,
 06 but it was strongly my view that any APIs that
 07 Microsoft applications used would be published and
 08 be made available to external ISVs.
 09 Q. Okay. And why was that your
 10 view?
 11 A. It was my view because our, well, I will
 12 say my. I won't represent the entire company,
 13 because there's many factions within the company.
 14 My view was the purpose of the
 15 operating system was to, well, our goal with
 16 Windows in Chicago, was to be very popular with
 17 third party developers, and we wanted to support
 18 their needs and we wanted to make them understand
 19 that they would not be at a disadvantage from an
 20 API standpoint, compared to a Microsoft
 21 application. Anything Microsoft applications
 22 could do, they could do.
 23 Q. Okay. When you used the phrase
 24 "Microsoft applications", did you include, do you
 25 include, within that definition, applications that
 00055:01 are bundled into the operating system? Like, for
 02 example, the mail clients?
 03 A. From what I understand, Capone, reading
 04 from this context, Capone is a MAPP mail client,
 05 and there was no MAPP mail client that was bundled

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06 into Windows.

34. PAGE 55:12 TO 56:21 (RUNNING 00:01:33.500)

12 Did anyone at Microsoft disagree
 13 with your view about publishing APIs that
 14 Microsoft applications relied upon?

15 A. I'm sure there was somebody at Microsoft
 16 to disagree with that point of view.

17 Q. Do you remember who?

18 A. I would imagine, there were folks in the
 19 Office group who felt that they should have some
 20 APIs that other ISVs had, but I disagreed.

21 Q. Okay. Do you have any specific
 22 recollection of who, within the Office group,
 23 shared that or held that view?

24 A. No.

25 Q. Okay. The second page of that
 00056:01 e-mail, at the bottom, the portion from Tom
 02 Evslin, says, "Discuss this with Bill G today.
 03 Since Capone is quite literally part of Chicago,
 04 like any other system component, it can use
 05 internal interfaces to communicate with other
 06 system components." Do you see that?

07 A. Yes.

08 Q. With that explanation, that
 09 "Capone is quite literally part of Chicago" --

10 A. Um-hmm.

11 Q. -- did you then still hold the
 12 view that those APIs, should be published?

13 A. Well, this turns out to be factually
 14 incorrect. Capone was not part, from what I
 15 understand from context, Capone is a MAPP e-mail
 16 client produced by Tom Evslin's group. He was in
 17 charge of, what's now called Outlook. We didn't
 18 ship a MAPP mail client with Windows.

19 Q. Okay.

20 A. So it's hard to respond to that, because
 21 it's not true.

35. PAGE 57:05 TO 61:15 (RUNNING 00:04:41.100)

05 Q. Okay. Let me, let's take a step
 06 back then. On the first page it says, "From:
 07 Doug Henrich, To: Brad Silverberg, Dennis Adler
 08 and David Cole."

09 A. Um-hmm.

10 Q. "I'm not sure what your thinking
 11 is about, publishing the interfaces/APIs that
 12 Capone use, but I know Lotus will make a big deal
 13 of this." Do you see that.

14 A. Yes, I do.

15 Q. And does that refresh your
 16 recollection that Mr. Henrich asked you, Mr. Adler
 17 and Mr. Cole for your thinking about whether or
 18 not to publish those interfaces?

19 A. I don't recall this e-mail. I don't
 20 recall the particular conversation. I do know
 21 that my view would have been that if we're
 22 shipping a component in Windows, such as that,
 23 then the APIs would be made available to other
 24 parties, but we didn't ship that as part of
 25 Windows, so it's somewhat of a moot question.

00058:01 Q. But, at the time, it was held out
 02 to be a component of Windows, and yet, your view
 03 was still that it should be published; is that
 04 right?

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05 A. No. That's not an accurate
 06 characterization.
 07 Q. How is it wrong?
 08 A. I don't necessarily agree that it was
 09 part of Windows, at that time.
 10 Q. Okay. Did you know, at the time,
 11 whether or not it was or was not part of Windows?
 12 A. I don't recall. What I can say is, that
 13 there may be other people who felt it was part of
 14 Windows, who were not part of the Windows group,
 15 and was not ultimately their decision whether it
 16 was part of Windows or not.
 17 Q. So my view was, and I don't
 18 recall this, like I said, I hadn't heard the word
 19 Capone and took a while, after reading these
 20 e-mails, to even know what it was, and it didn't
 21 ship as part of Windows.
 22 Q. I don't recall why that saying
 23 this is part of Windows doesn't -- having, reading
 24 an e-mail from somebody that says this is part of
 25 Windows, from somebody who's not in the Windows
 00059:01 group, doesn't necessarily mean that's true.
 02 Q. Okay. Was it, to your knowledge,
 03 Mr. Gates' view that Capone was considered part of
 04 Windows?
 05 A. I don't know.
 06 Q. Do you recall whether or not
 07 Mr. Gates was of the view that the APIs that
 08 Capone used should or should not be published?
 09 A. I don't know, and I'm not sure that
 10 would have made a difference.
 11 Q. And why not?
 12 A. I may not have followed Mr. Gates'
 13 opinion on that.
 14 Q. Who was responsible for deciding
 15 whether or not to publish interfaces that
 16 Microsoft applications used from the operating
 17 system?
 18 A. I don't know how a final decision would
 19 be made. It would be myself, Mr. Cole and
 20 Mr. Adler and folks in DRG, including Mr. Henrich.
 21 Q. Okay. Did Mr. Gates have any
 22 role in deciding whether or not to publish those
 23 interfaces?
 24 A. He had a role.
 25 Q. What role?
 00060:01 A. He would give his opinion.
 02 Q. Okay. And what weight was his
 03 opinion given among the group that you were in?
 04 A. I don't know, in this specific example.
 05 Q. Did he --
 06 A. I don't know if he even had an opinion
 07 in this specific example.
 08 Q. Okay. Let's go back to the
 09 second page from Tom Evslin.
 10 A. Um-hmm.
 11 Q. "Discuss this with Bill G
 12 today." You see that?
 13 A. Yes.
 14 Q. Do you understand that to be a
 15 reference to Mr. Gates?
 16 A. Yes.
 17 Q. Okay.
 18 A. People discuss things with Bill G all
 19 the time, and Bill would tell people contradictory
 20 things. So, reading in an e-mail that somebody

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21 spoke with Bill G is, like, not that relevant.
 22 Q. Okay. Did you talk to Mr. Gates
 23 about that decision, whether or not to publish
 24 those APIs?
 25 A. Don't recall.
 00061:01 Q. Did Mr. Gates have the power to
 02 decide whether or not APIs in Windows 95 should or
 03 should not be published?
 04 A. Ultimately, yes. I mean, if Bill
 05 decided this was going to be something that he was
 06 going to issue an edict over strenuous objections,
 07 he had the power to do that.
 08 Q. Okay.
 09 A. I don't recall him ever exercising that
 10 power.
 11 Q. Okay. Do you recall a debate
 12 that existed during the development of Chicago,
 13 whether or not to publish extensions that Capone
 14 or other Microsoft applications relied upon?
 15 A. No.

36. PAGE 61:18 TO 61:19 (RUNNING 00:00:11.000)

18 Q. Let me give you what's Exhibit 6,
 19 MS 0186399?

37. PAGE 61:20 TO 63:23 (RUNNING 00:02:08.000)

20 A. Okay.
 21 Q. And just for your knowledge, this
 22 is how the document was produced to us. It has
 23 the same heading as that prior e-mail chain you
 24 saw before, you see that?
 25 A. Yes.
 00062:01 Q. Capone and Chicago?
 02 A. Ah-ha.
 03 Q. Do you have any understanding
 04 whether or not this is an extension of that e-mail
 05 chain?
 06 A. No. I don't recall the e-mail.
 07 Q. The bottom part says, From: Brad
 08 Silverberg, To: David Cole, Dennis Adler and Doug
 09 Henrich. "We clearly have to publish whatever
 10 APIs, Capone uses." Do you see that?
 11 A. Yes.
 12 Q. Okay. And the reason you --
 13 strike that.
 14 Q. Do you have any understanding why
 15 you wrote that?
 16 A. I think it's consistent with what I had
 17 expressed previously, which would be if, and this
 18 is predicated on shipping Capone, which ultimately
 19 didn't happen.
 20 Q. Um-hmm.
 21 A. If we ship it, it was my view that we
 22 need to publish those APIs.
 23 Q. Okay. What's the significance of
 24 publishing an API?
 25 A. The significance is, it's made available
 00063:01 to developers to write to in a supportive fashion.
 02 Q. Okay. If it's not published,
 03 isn't it still available?
 04 A. It's available, but may change, and it's
 05 not supported.
 06 Q. Okay. And what do you mean by
 07 not supported?
 08 A. During multiple iterations of the

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09 operating system, may be dropped, it may have
10 different behavior. You couldn't rely on the fact
11 that that API would be there in the future.

12 Q. Okay.

13 A. So, applications could break.

14 Q. So, when Microsoft makes a
15 decision to publish an API, it's making a decision
16 to support an API; is that right?

17 A. Yes. There may be cases, you know, down
18 the road, where support for that API may need to
19 be dropped for whatever, or we altered it for some
20 reason, but the intention is, once it's published,
21 then it's supported and maintained, and
22 applications that use those APIs, are expected to
23 be compatible in the future.

38. PAGE 64:03 TO 64:23 (RUNNING 00:01:00.000)

03 Do you have any doubt that you
04 were of the view, in September 1993, that
05 Microsoft had to publish whatever APIs Capone
06 used?

07 A. My view was, if Capone were to ship with
08 Windows, then whatever APIs Capone would use, then
09 it would need to be published, yes.

10 Q. Do you know whether, as a result
11 of, well, -- strike that.

12 And did you have the power to
13 decide whether or not an operating system -- well,
14 strike that.

15 Did you have the power to decide
16 whether or not Windows 95 published those APIs?

17 A. Yes. With the asterisk, as I mentioned
18 before, Mr. Gates came to me, said, you know,
19 you're fired unless you do this, and that's the
20 level of thing it would take. Then ultimately, I
21 would have to, I would have a decision at that
22 point, but modulo that, yes.

23 Q. Okay.

39. PAGE 65:01 TO 65:03 (RUNNING 00:00:08.000)

00065:01 A. And Mr. Gates never told me, unless you
02 published these, don't publish these APIs, you're
03 fired.

40. PAGE 65:05 TO 65:06 (RUNNING 00:00:11.488)

05 bit of disorganization. Exhibit 7, is MS7086583
06 through 84. It's double-sided.

41. PAGE 65:07 TO 68:01 (RUNNING 00:02:47.467)

07 A. Okay.

08 Q. Do you have any recollection of
09 this e-mail?

10 A. No.

11 Q. This is an e-mail that was from
12 Mr. Cole to you, and to others, which you
13 forwarded; is that right?

14 A. Yes.

15 Q. Okay. The one, two, three,
16 fourth paragraph down.

17 A. Um-hmm.

18 Q. Mr. Cole writes, "They were very
19 happy about us deciding to document the shell
20 extensions (sic)." Do you see that?

21 A. Yes.

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22 Q. Do you have an understanding of
23 what the shell extensions were, that Mr. Cole was
24 referring to?
25 A. Vaguely.
00066:01 Q. And what's your understanding?
02 A. Well, there were a lot of mechanisms in
03 the Windows shell to extend it, and so, I guess,
04 he was to hear about, they were happy to hear
05 about the shell extensions.
06 Q. Okay. And was there a period of
07 time where it was unclear whether or not Microsoft
08 would publish -- strike that.
09 -- would document those shell
10 extensions?
11 A. I don't recall.
12 Q. The phrase that's used here, is
13 "document the shell extentions." "Is that
14 essentially the same as publish the shell
15 extensions?
16 A. Yes.
17 Q. And do you have any understanding
18 whether this reference to the shell extensions
19 refers back to the APIs that Capone intended to
20 use?
21 A. I'm pretty sure no.
22 Q. Why not?
23 A. Because I thought Capone, the discussion
24 was about MAPP.
25 Q. Why do you say you thought it was
00067:01 about MAPP?
02 A. Well, from the e-mails I just read. It
03 referred to MAPP.
04 Q. What in those e-mails -- you can
05 flip back. What in those e-mails led you to
06 believe that the issue was about MAPP?
07 A. I don't know. Just, I read the word
08 MAPP, and that's what I thought the discussion was
09 about.
10 Q. Okay. Can you just flip back and
11 tell me where you saw the word MAPP?
12 A. I thought I did. I guess I just
13 inferred that. I don't see it. Capone, what I
14 understood is that it was a MAPP e-mail client, so
15 I thought that was the discussion.
16 Q. Okay.
17 A. So, I don't even know what APIs this is
18 talking about.
19 Q. Okay. Fair enough. Do you know
20 whether --
21 A. All the previous discussion, I don't
22 know which APIs.
23 Q. Okay.
24 A. I thought it was about MAPP, and I'm
25 inferring now that it wasn't about MAPP, so I
00068:01 don't know what APIs are being discussed.

42. PAGE 68:23 TO 69:08 (RUNNING 00:00:23.600)

23 Q. Do you know if they were the same
24 APIs that is being referred to in this document
25 that I'm showing you, regarding WordPerfect being
00069:01 happy about Microsoft deciding to document the
02 shell extensions?
03 A. No.
04 Q. Okay. Did you have any
05 conversations with Mr. Cole about WordPerfect's
06 reaction to Microsoft's decision to document the

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07 shell extensions?
 08 A. I don't recall.

43. PAGE 69:11 TO 69:19 (RUNNING 00:00:21.000)

11 Do you recall having any
 12 conversations with WordPerfect regarding
 13 publications of APIs for Chicago?
 14 A. I don't recall any direct conversations
 15 I may have had.
 16 Q. Okay. Do you recall any direct
 17 conversations with anybody at WordPerfect during
 18 this '93, '94 time period?
 19 A. No.

44. PAGE 69:23 TO 70:01 (RUNNING 00:00:17.999)

23 Q. All right. Let's go to Exhibit
 24 8.
 25 A. Thank you.
 00070:01 Q. Which is MS7094492 through 94.

45. PAGE 70:02 TO 70:05 (RUNNING 00:00:12.145)

02 This is three pages. My questions will, in large
 03 part, focus on the portion that purports to be
 04 from you, but I don't want that to limit what you
 05 look at.

46. PAGE 70:06 TO 72:01 (RUNNING 00:01:48.000)

06 A. Okay.
 07 Q. All right. Do you recall this
 08 e-mail chain?
 09 A. No.
 10 Q. Okay. The bottom e-mail purports
 11 to be from you to Mr.'s Cole, Adler, Belfiore and
 12 Eckhardt. Do you see that?
 13 A. Yes.
 14 Q. Do you have any reason to doubt
 15 that you sent that e-mail?
 16 A. No.
 17 Q. And that you authored it?
 18 A. That's correct.
 19 Q. Who was Kurt Eckhardt?
 20 A. I think he was a developer. Yeah. He
 21 was a developer.
 22 Q. Your first sentence says, "I
 23 talked to Paul M-A today about shell issues."
 24 Does that refer to Mr. Maritz?
 25 A. That's right, yes.
 00071:01 Q. That's right, yes. My apologies,
 02 and my apologies to him. The third paragraph
 03 down, there's a reference to Chicairo apps. Do
 04 you see that?
 05 A. Yes.
 06 Q. What's a Chicairo app?
 07 A. I don't know. The whole e-mail chain
 08 makes me laugh, because Cairo never shipped.
 09 Q. Um-hmm.
 10 A. So I can only presume Chicairo app is an
 11 application that will run in both Chicago and
 12 Cairo.
 13 Q. And Cairo was a more advanced
 14 operating system that was in the planning stages
 15 at the time; is that right?
 16 A. Yes. Cairo was a mirage in the desert.
 17 Q. And it never shipped; is that

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18 right?
19 A. Never shipped.
20 Q. Was there an effort during this
21 time period, this 1993 time period, to develop
22 applications that would work both on Chicago and
23 what would, was envisioned to be Cairo?
24 A. Was there an effort?
25 Q. Um-hmm, yes.
00072:01 A. I don't really know.

47. PAGE 72:04 TO 74:12 (RUNNING 00:02:37.000)

04 The fourth paragraph down, you
05 write, "This means that they plan to write a bunch
06 of shell extensions to the Chicago v1 shell." Do
07 you see that?
08 A. Yes.
09 Q. And what did you mean by that?
10 A. I guess, I was referring to, the
11 application group was planning to write shell
12 extensions, or write to the shell extensions of
13 the Chicago v1 shell, which, in the end, I don't
14 believe they did.
15 Q. Okay. And why did you not
16 believe they did that?
17 A. I don't believe they did. My
18 recollection is, I don't believe they wrote shell
19 extensions, wrote, took advantage of shell
20 extensions. Could be wrong, but I don't, I don't
21 believe they did.
22 Q. Okay. And that's just your
23 recollection today?
24 A. That's my recollection.
25 Q. Okay. Is it your recollection
00073:01 that there was a plan, at the time, for Office to
02 write to shell extensions exposed by the Chicago
03 shell?
04 A. In reading this e-mail, I take it, that
05 there was some discussion to do that. I don't
06 know detailed a plan that ever became, how much of
07 that ever happened.
08 Q. Okay.
09 A. So what I take from this is, that there
10 was at least a discussion, at that point, in
11 October of '93 to write to the shell extensions of
12 Chicago.
13 Q. Allright. To what degree did
14 you interact with the Office group?
15 A. To what degree, I spoke to them every
16 now and then.
17 Q. On what topic?
18 A. For the most part, I treated them like
19 any other ISV.
20 Q. Okay. Did you, in any part,
21 treat them differently than any other ISV?
22 A. Well, they sat on the same campus as me,
23 so I might have had lunch with them occasionally.
24 But as a policy point of view, we treated the
25 applications group like any other ISV.
00074:01 Q. Okay. And how did you do that?
02 A. Well, discussing APIs, we often had
03 design previews. In fact, with third party ISVs,
04 before we had them with Microsoft Office
05 applications guys, we would have them at general
06 design previews. Sometimes we'll give them their
07 own, sometimes they'd be together. Sometimes
08 they'd be after.

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09 Q. Okay. Was there somebody in
 10 particular responsible for dealing with Microsoft
 11 Office?
 12 A. Mostly, David Cole and Dennis Adler.

48. PAGE 75:21 TO 76:03 (RUNNING 00:00:19.400)

21 Q. Okay. The next sentence says,
 22 "Other things that Office wants from the shell
 23 will be done as Chicago shell extensions." Do you
 24 see that?
 25 A. Yes.
 00076:01 Q. And what does that mean?
 02 A. Apparently, Office wanted to write to
 03 the Window shell extensions.

49. PAGE 76:06 TO 76:18 (RUNNING 00:00:26.400)

06 Do you have any recollection of
 07 discussions with members of the Office team
 08 regarding what they wanted from the shell?
 09 A. No.
 10 Q. Do you understand that reference
 11 to the shell to be the operating system shell?
 12 A. Yes. The Chicago shell, yes. Chicago
 13 with Windows 95.
 14 Q. Do you have any recollection of
 15 requests made by members of Microsoft Office to
 16 provide functionality within the shell, that the
 17 Office group could take advantage of?
 18 A. No.

50. PAGE 76:19 TO 76:22 (RUNNING 00:00:10.688)

19 Q. Okay. Let's go to Exhibit 9.
 20 (Whereupon, Silverberg-9 is
 21 received and marked for identification.)
 22 Q. Which is MS 5044763.

51. PAGE 76:23 TO 78:25 (RUNNING 00:02:40.700)

23 A. Um-hmm.
 24 Q. Okay. Who was Jeff Thiel?
 25 A. Jeff Thiel was, I believe, he was in the
 00077:01 Windows marketing group, Windows product
 02 management group.
 03 Q. And do you recall receiving a
 04 copy of that e-mail from Mr. Thiel?
 05 A. No.
 06 Q. The last sentence of Mr. Thiel's
 07 e-mail to you and others says, "I think this is a
 08 great example of how we kill OS/2 by sucking up
 09 ISV bandwidth." Do you see that?
 10 A. Yes.
 11 Q. Do you have an understanding of
 12 what Mr. Thiel meant when he wrote that to you?
 13 A. You would have to ask Mr. Thiel.
 14 Q. Okay. Do you have any
 15 understanding when you received this e-mail of
 16 what he was talking about?
 17 A. Yes.
 18 Q. What was your understanding?
 19 A. Well, our Windows strategy was to get as
 20 much ISV support for Windows as possible. We had
 21 a number of programs in place to support and
 22 promoted development of Windows applications on
 23 our platform, and part of that was the strategy
 24 for competing with OS/2.

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25 The more applications that are on
 00078:01 Windows, the more attractive windows would be, the
 02 more favorable its competitive position versus
 03 OS/2 would be.
 04 Q. Okay. And is that your
 05 understanding of what the phrase "sucking up ISV
 06 bandwidth" means?
 07 A. Well, my view would be that ISVs,
 08 obviously, well, obvious to us, at least, was that
 09 we would much rather have ISVs developing for
 10 Windows 95, than we would be developing, and
 11 supporting, and promoting a competing platform.
 12 Q. Okay. How would that kill
 13 another operating system?
 14 A. I think one element of competing with
 15 another operating system is the amount and depth
 16 and breadth of application support for that
 17 operating system, and that was a very important
 18 goal for us with Windows 95, to enlist, support,
 19 encourage and help other third parties to develop
 20 for a Windows operating system.
 21 That would make more applications
 22 available for consumers uses of Windows, make
 23 Windows a more attractive platform, and would make
 24 it advantageous in competition with competing
 25 operating systems.

52. PAGE 80:14 TO 82:10 (RUNNING 00:02:10.099)

14 Do you have any understanding of
 15 what Mr. Thiel meant by "the nail in OS/2's
 16 coffin"?
 17 A. You would have to ask Mr. Thiel. My
 18 view is, we were, obviously, very interested in
 19 having software developers. WordPerfect had been
 20 late to Windows platform. I think it hurt them by
 21 not adopting, they took a competitive position
 22 against Windows.
 23 They realized that Windows was
 24 being successful, and they came along late to
 25 develop for Windows, and we were very happy when
 00081:01 they came to Windows, and we wanted to provide
 02 them with whatever support that we could to help
 03 them build a successful application for
 04 Windows 95.
 05 Q. Okay. Was it your understanding
 06 that WordPerfect was -- strike that.
 07 Was it your understanding that
 08 WordPerfect did not want to repeat its mistake for
 09 being late to Windows, with Windows 95?
 10 A. Yes. They were late for Windows 95, so
 11 that's a fact.
 12 Q. Okay. Why were they late for
 13 Windows 95, to your knowledge?
 14 A. You would have to ask WordPerfect why
 15 their strategy was to adopt Windows so late.
 16 Q. Okay. Was it your understanding,
 17 back in November of 1993, that WordPerfect was
 18 excited about creating an application for Windows
 19 95?
 20 A. My understanding is that, as a company,
 21 they were still mixed. There were probably
 22 portions of WordPerfect that were excited and
 23 there were other portions that weren't.
 24 Q. Were the developers excited, to
 25 your knowledge?
 00082:01 A. I can't speak for WordPerfect developers

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02 as a class.
 03 Q. Did you get any information back,
 04 in November of '93, that WordPerfect was
 05 enthusiastic about Chicago?
 06 A. I don't recall.
 07 Q. Okay. Earlier, I showed you a
 08 document that Mr. Cole sent to you, was written on
 09 November 15th, 1993. I apologize, I didn't
 10 scribble the exhibit number on mine.

53. PAGE 82:12 TO 83:09 (RUNNING 00:00:42.699)

12 Q. It's number 7. Could you pull
 13 that out, please?
 14 A. Yup.
 15 Q. Okay.
 16 A. All right. Okay.
 17 Q. The second paragraph.
 18 A. Um-hmm.
 19 Q. At the very bottom, Mr. Cole
 20 writes, "It was interesting to see how
 21 enthusiastic WP was about Chicago."
 22 A. Um-hmm.
 23 Q. "Much in contrast with the ho-hum
 24 attitude of our own apps group."
 25 A. Um-hmm.
 00083:01 Q. What was your understanding of
 02 what Mr. Cole meant when he wrote that to you?
 03 A. Sounds like he had a good visit with
 04 WordPerfect in November of '93. How much of that
 05 was follow through, and how representative of that
 06 was of the corporation as a whole, I don't know.
 07 Q. Okay. Certainly, at that time,
 08 it was your view that WordPerfect was enthusiastic
 09 about Chicago; is that right?

54. PAGE 83:12 TO 85:21 (RUNNING 00:02:31.700)

12 A. No. That's not what I said. I said,
 13 I'm sorry. That some of the folks that he spoke
 14 to, I don't know whether they represent
 15 WordPerfect corporations, Pete Peterson, or
 16 whoever was running the company, at that point.
 17 He made a visit, the folks he
 18 spoke to seemed enthusiastic. Whether they were
 19 the folks who made decisions or not made
 20 decisions, whether they were coders or not coders,
 21 executives or not, don't no. And how well they
 22 followed through on that enthusiasm at that
 23 November meeting, don't know.
 24 Q. Okay. Do you recall receiving
 25 any information that conflicted with this note
 00084:01 about certain members of WordPerfect being
 02 enthusiastic about Chicago?
 03 A. When I think of Windows 95, development,
 04 those who really stand out as being supportive,
 05 and enthusiastic, and really working with the
 06 team, WordPerfect was not there. They were not as
 07 engaged as other ISVs.
 08 Q. Such as?
 09 A. Lotus.
 10 Q. Okay. And Lotus was particularly
 11 engaged for what?
 12 A. Lotus was much more engaged, the Noorda
 13 group was much more engaged. I don't know
 14 whether, yes, Lotus group were particularly
 15 engaged, the Noorda group was particularly

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16 engaged. WordPerfect did not seem as engaged as
 17 other ISVs.
 18 Q. And what do you base that on?
 19 A. Just recollection.
 20 Q. Okay. Any particular
 21 recollection?
 22 A. Level of interaction we may have had. I
 23 don't recall meeting directly with folks from
 24 WordPerfect, but I did meet directly with folks
 25 from Lotus about this initiative, folks with
 00085:01 Borland, folks from Norton, Folks from other ISVs.
 02 I don't recall, from some of the
 03 design previews that I attended, don't recall
 04 WordPerfect people standing up, you know, or being
 05 involved in some of the discussions at the same
 06 level other folks were.
 07 Q. Okay. Anything else that is the
 08 basis for your recollection?
 09 A. That's what I recall, at the moment.
 10 I'm sure there could be others.
 11 Q. Okay. Did Lotus provide --
 12 strike that.
 13 Did Lotus provide Notes within 30
 14 to 60 days of the release of Chicago?
 15 A. I don't know, but they were quite
 16 engaged with Windows development, to my
 17 recollection, but I don't know what their delivery
 18 timeframe ended up to be.
 19 Q. You don't know if they were late
 20 or not?
 21 A. I don't know, no.

55. PAGE 86:01 TO 86:25 (RUNNING 00:01:11.600)

00086:01 Do you have any understanding of
 02 what Mr. Thiel meant when he wrote "can be the
 03 nail in OS/2's coffin"?
 04 A. You would have to ask Mr. Thiel.
 05 Q. You didn't have an understanding
 06 when you read and received this e-mail; is that
 07 right?
 08 A. I mean, certainly, not writing for OS/2
 09 is not a good thing. Certainly, having
 10 WordPerfect or other application companies write
 11 for OS/2 is a good thing, having them for OS/2.
 12 Having them not write for OS/2 is a good
 13 thing for, is not a good thing for OS/2 in a
 14 competitive battle. It's helpful for Windows.
 15 Q. What's the PVC, by the way?
 16 A. Professional developers conference.
 17 Q. What's that?
 18 A. I don't know if it's still held, but it
 19 was an annual gathering where Microsoft talked
 20 about its operating system plans to third party
 21 developers.
 22 Q. Okay. And didn't you understand
 23 Mr. Thiel's reference to be, that something, that
 24 at that PDC would enable, or be, enable Microsoft
 25 to kill off OS/2 somehow?

56. PAGE 87:03 TO 87:09 (RUNNING 00:00:24.200)

03 A. The PDC in 1993, I believe, was when we
 04 first spoke publicly about Chicago.
 05 Q. Um-hmm.
 06 A. And we were eager to show a lot of
 07 momentum behind Chicago. A lot of interest, a lot

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08 of momentum, and having ISV support would be part
 09 of that.

57. PAGE 99:19 TO 99:20 (RUNNING 00:00:02.000)

19 (Exhibit Silverberg-11 marked for
 20 identification.)

58. PAGE 100:24 TO 101:04 (RUNNING 00:00:08.000)

24 Q. All right. E-mail from you to
 25 Mr. Maples, do you recall writing that e-mail?
 00101:01 A. No.
 02 Q. Do you have any reason to doubt
 03 that you wrote it?
 04 A. No.

59. PAGE 101:07 TO 101:23 (RUNNING 00:00:39.000)

07 Do you have any recollection why
 08 you wrote this e-mail?
 09 A. Only vaguely consistent with the theme
 10 that I have expressed so far, which is my
 11 frustration with Microsoft Windows server
 12 business, which did not work for me.
 13 Q. Okay. You didn't have any
 14 involvement in the server business; is that right?
 15 A. That's correct.
 16 Q. Okay. Why all the e-mails about
 17 the server business?
 18 A. I had thoughts about operating systems.
 19 Q. Okay. Did you have any concerns
 20 that Novell's success in the server business could
 21 spill over into the operating system business?
 22 A. Well, server business was the operating
 23 business.

60. PAGE 102:02 TO 102:12 (RUNNING 00:00:29.300)

02 The bottom of that e-mail, under
 03 Number 3?
 04 A. I see a 4.
 05 Q. It's at the bottom --
 06 A. The bottom of the first page, got it.
 07 Q. The last three tiny lines there.
 08 You write, "Novell runs their business more
 09 effectively." What did you mean by that?
 10 A. It was my belief, at the time, that part
 11 of Microsoft, including the server business, were
 12 kind of fat.

61. PAGE 102:16 TO 103:20 (RUNNING 00:01:02.400)

16 Q. And that was the basis for your
 17 view that Novell ran its business more
 18 effectively; is that right?
 19 A. It's one of the reasons.
 20 Q. Any others?
 21 A. I think, at the time, they were more
 22 focused.
 23 Q. Okay. You write then, "As the
 24 Bain report highlights, they have continual
 25 emphasis on headcount (sic) and cost management."
 00103:01 Do you see that?
 02 A. Yes.
 03 Q. And was it your view that that
 04 emphasis on head count and cost management
 05 indicated that Novell ran its business more
 06 effectively than Microsoft?

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07 A. More cost effectively, at the time.
 08 Q. And did you --
 09 A. At the time, as a general statement, the
 10 answer's, no.
 11 Q. Okay. But at the time, that was
 12 your view?
 13 A. At the time, my view was the Windows
 14 server business was fat.
 15 Q. Okay. And that Novell's emphasis
 16 on head count and cost management was good
 17 business practice; is that right?
 18 A. I was trying to make a point that I felt
 19 our business was fat, and using Novell as an
 20 example.

62. PAGE 103:23 TO 105:13 (RUNNING 00:01:53.215)

23 Was it your view that Novell's
 24 emphasis on head count and cost management was
 25 good business practice?
 00104:01 A. It was my view, I wasn't really trying
 02 to make a point about Novell, as much as I was
 03 trying to make a point about Windows, and the
 04 windows server business, and my view, it was too
 05 fat.
 06 Q. And I apologize for interrupting,
 07 that's what I promised I wouldn't do. You then
 08 write, "Revenue per head, for example, is a key
 09 measure tracked directly by Noorda." Do you see
 10 that? At the very last sentence?
 11 A. Yes, I see that.
 12 Q. And Noorda is Ray Noorda; is that
 13 correct?
 14 A. Yes.
 15 Q. What was the significance of
 16 revenue per head being a key measure tracked
 17 directly by Novell?
 18 A. Again, I think I'm more trying to make a
 19 point, that for the Windows server business, I
 20 realize, it doesn't say that explicitly, but I can
 21 tell you my view was, as a business practice, good
 22 thing to track revenue per head. And I think it
 23 would have been a good metric to measure for the
 24 Windows server business at the time, or any
 25 business at Microsoft or elsewhere.
 00105:01 Look at, particularly technology
 02 business, look at revenue per head, and I saw that
 03 that was something Novell did, and thought that
 04 was something we should adopt.
 05 Q. Okay. Do you know if Microsoft
 06 ever adopted that?
 07 A. As a company, I don't know. Certainly,
 08 within my group, I recall tracking revenue per
 09 head.
 10 (Exhibit Silverberg-12 marked for
 11 identification.)
 12 Q. Let's go to Exhibit 12, which is
 13 MS 506405 through 51, that is two-sided. Okay?

63. PAGE 105:14 TO 105:18 (RUNNING 00:00:11.386)

14 Do you recognize that e-mail?
 15 A. No.
 16 Q. Do you have any reason to doubt
 17 that you wrote portions of that e-mail chain?
 18 A. No, I don't.

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64. PAGE 105:21 TO 109:20 (RUNNING 00:04:49.470)

21 At the very bottom portion of
22 that mail is from you to Joe B and Kurt E. Do you
23 see that?
24 A. Yes.
25 Q. Okay. Is Joe B, Joe Belfiore?
00106:01 A. Yes.
02 Q. Kurt E, is Kurt Eckhardt?
03 A. Kurt E, is Kurt Eckhardt.
04 Q. Do you recall why you wanted them
05 to bring you up to date on where Microsoft was
06 with the plans for shell extensions?
07 A. No.
08 Q. Were you responsible for telling
09 ISVs what shell extensions they could do and how?
10 A. Ultimately, it was DRG that was
11 responsible for telling them.
12 Q. Okay. Did you have any role in
13 deciding what DRG told them?
14 A. Yes.
15 Q. And what was your role?
16 A. We would discuss with DRG and come to a
17 joint decision.
18 Q. Okay.
19 A. DRG is Developer Relations Group.
20 Q. Thank you.
21 A. They did not work for me.
22 Q. Mr. Eckhardt then writes to you,
23 in response to your e-mail, talking about
24 extension mechanism and several different areas
25 for extensions, including things like, and there's
00107:01 three things listed there. Do you see that?
02 A. Yes, I do.
03 Q. Do you have a recollection of
04 Number C -- Letter C, "Ways for ISVs to add
05 specific types of folders into the name space"?
06 A. Not really. There are a number of
07 different extension mechanisms and name space
08 extension was one of them. I couldn't really tell
09 you what it does.
10 Q. Okay. Do you know if these
11 extensions relate back to the ones that you
12 advocated publishing back in late 1993?
13 A. Say that again?
14 Q. Are these extensions, that are
15 the subject of this e-mail, the same extensions
16 that you advocated publishing back in late 1993?
17 A. I presume so. I mean, I advocated
18 publishing the shell extensions, and these would
19 be the shell extensions.
20 Q. Okay.
21 A. I think that's the case, but, there may
22 have been others. They may have changed between
23 then, between November, I think January, so the
24 answer is, shell extensions in general, yes.
25 These specific ones, I don't recall.
00108:01 Q. Okay. You wrote at the top
02 there, "I am very proud of the way the team has
03 architected the extension mechanism."
04 A. Yes.
05 Q. "To use OLE interfaces but have a
06 lightweight implementation underneath."
07 A. Yes.
08 Q. What did you mean by that?
09 A. What I meant by that is, and it kind of

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10 relates a little bit to one of the earlier
 11 e-mails, is that there was a big debate, big kind
 12 of internal controversy, between two of the Cairo
 13 shell team, and the Windows 95 shell team.

14 And there was, it took -- Cairo
 15 team wanted to be the shell team for all of
 16 Windows, Windows 95 team wanted to be the shell
 17 team for all of Windows, and I had a very large
 18 concern that Cairo was going to be too resource
 19 intensive to be able to run effectively on
 20 Windows 95.

21 Windows 95 had a requirement,
 22 design requirement, that would run effectively on
 23 four megabyte machines, which was my own personal
 24 machine, and also run super well on 8 megabyte
 25 machines.

00109:01 It was never going to be possible
 02 using a Cairo code base or using a full OLE
 03 implementation from Cairo or Windows NT. So there
 04 was a debate over how we could, perhaps, provide
 05 some interfaces that would be common in between
 06 Windows 95 and the Cairo product, which never
 07 shipped.

08 And so, I was very proud of the
 09 team, at how they could be cooperative with the
 10 Cairo team, provide a common API to ISVs and other
 11 application developers, while still being able to
 12 maintain the Chicago goal of performance.

13 In some sense, it's analogous of
 14 what you're seeing today with Vista versus Windows
 15 7. Vista is kind of a resource pig, and Windows 7
 16 is getting much better reviews. It's kind of a
 17 similar situation, so I was very proud of the team
 18 on how they were able to be good corporate
 19 citizens while still deliver the product that we
 20 needed to deliver to the market.

65. PAGE 109:23 TO 110:22 (RUNNING 00:01:00.500)

23 Was it your view, at the time,
 24 that those extension mechanisms were of good
 25 quality?

00110:01 A. I had no opinion, really, on whether
 02 they were good quality or not.

03 Q. Okay.

04 A. Not that I recall.

05 Q. So you're being proud was over
 06 the fact that they were able to work cooperatively
 07 with the Cairo group to create an extension that
 08 worked?

09 A. No. It was more about the
 10 implementation, that they were able to come up
 11 with the extension mechanisms that used OLE
 12 interfaces, which is what Cairo used, but still
 13 had a high performance lightweight implementation
 14 that would be consistent with our goals for
 15 Chicago.

16 Q. Do you know if the debate that
 17 existed between Cairo and Chicago shell teams
 18 continued to exist after this e-mail?

19 A. Don't know. Ultimately, Cairo shell
 20 team was disbanded, and the Windows 95 shell team
 21 became the team, and I don't recall exactly when
 22 that occurred.

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66. PAGE 111:20 TO 114:15 (RUNNING 00:02:59.800)

20 Did the Cairo shell have
21 different extension mechanisms than the Chicago
22 shell?
23 A. At that point in time, I don't know.
24 Cairo shell was a different shell. They used OLE
25 extension, they used OLE interfaces. I don't
00112:01 recall what their extension mechanism was.
02 Q. Okay.
03 A. I'm referring from this e-mail that we
04 came up with some compatible interfaces, but I
05 don't recall.
06 Q. Was there a debate, at this time,
07 regarding what shell would be provided with
08 Chicago?
09 A. There was a debate. I don't know when
10 that debate got resolved. Yes, as I mentioned,
11 there was a debate. Whether it was a Cairo shell
12 that was going to end up on Chicago, that was
13 shipped with Chicago, or whether it was the
14 Chicago shell, that was an ongoing debate inside,
15 between my team and Allchin's team and ultimately,
16 got decided by Maritz to use the Chicago shell.
17 Q. Do you recall what Microsoft told
18 ISVs regarding what shell they should anticipate
19 would come out with Chicago as they created their
20 development plans?
21 A. I'm pretty sure it was the Chicago
22 shell.
23 Q. Okay. Did Microsoft share with
24 those ISVs the existence of the debate that you
25 have just discussed here regarding --
00113:01 A. Well, I'm sure the fact that there was a
02 Cairo and a Chicago made itself evident that there
03 was a discussion, but I don't know whether we ever
04 shared the fact that there was an internal debate.
05 Q. Okay. Do you recall whether
06 Microsoft told ISVs that Chicago may, in fact,
07 actually ship with the Cairo shell.
08 A. I doubt it.
09 Q. Why do you doubt that?
10 A. It would have been over my dead body.
11 Q. Why is that?
12 A. Because I felt that would have caused
13 Chicago to fail.
14 Q. Okay. Why were you looking for
15 information to provide to ISVs who ask about
16 writing extensions?
17 A. I'm sorry. Could you restate that
18 question?
19 Q. Yes. Let me just tie it back
20 into your document, okay? The last sentence says,
21 "I'm just looking now what to tell ISVs who ask -
22 when will they have enough documentation and
23 working code to begin writing extensions." Why
24 were you looking for that information?
25 A. I don't know. This is shortly after
00114:01 PDC. I can only presume after we showed Chicago,
02 including the Chicago shell, at the PDC, people
03 were asking questions.
04 Q. What did you mean by "enough
05 documentation and working code to begin writing
06 extensions"?
07 A. Documentation to the APIs and sample
08 code.

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09 Q. Was there some threshold of
 10 documentation and sample code that APIs needed to
 11 begin writing extensions?
 12 A. You'd have to ask DRG.
 13 Q. And was that the kind of
 14 information you were trying to gather?
 15 A. I don't know.

67. PAGE 119:14 TO 119:15 (RUNNING 00:00:11.999)

14 Q. Exhibit 14, which is MX 5117033
 15 through 34.

68. PAGE 119:16 TO 119:18 (RUNNING 00:00:03.826)

16 A. Okay.
 17 Q. Do you recall this e-mail chain?
 18 A. No, I don't.

69. PAGE 119:22 TO 120:08 (RUNNING 00:00:21.000)

22 Do you have any reason to doubt
 23 that you wrote the top portion of this e-mail, to
 24 you from Evslyn and Gates?
 25 A. No.
 00120:01 Q. Do you have any reason to doubt
 02 that you received this portion of the e-mail from
 03 Bill Gates, "Subject: Shell plans -
 04 iShellBrowser"?
 05 A. No.
 06 Q. Okay. Do you have any
 07 understanding of what iShellBrowser was?
 08 A. I don't recall.

70. PAGE 120:11 TO 120:14 (RUNNING 00:00:11.700)

11 Do you recall a time when
 12 Mr. Gates decided that Microsoft should not
 13 publish a certain set of shell extensions.
 14 A. I don't recall.

71. PAGE 121:07 TO 122:18 (RUNNING 00:01:31.000)

07 Q. Okay. Following Mr. Gates'
 08 e-mail, Mr. Evslyn writes, whether or not Capone
 09 and Marvel can continue to use those extensions.
 10 Do you see that?
 11 A. Yes, I do.
 12 Q. And then you respond by saying,
 13 "Yes, we have to take them out of Marvel and
 14 Capone too." Do you see that?
 15 A. Yes, I do.
 16 Q. And do you remember expressing
 17 that opinion?
 18 A. I don't remember it, but I believe it.
 19 Q. Okay. Why was --
 20 A. It's consistent with past e-mails, where
 21 I viewed Capone as coming from the applications
 22 group, not from the operating system, and anything
 23 from the applications group would have to be
 24 documented.
 25 Q. Okay. What was Marvel?
 00122:01 A. I think Marvel might have been the
 02 client from the, well, what was then called the
 03 MSN group, Russ Siegelman's group.
 04 Q. Okay. You then wrote, "There is
 05 no one in the world outside of Microsoft who will
 06 buy the argument that they are, 'part of Chicago'
 07 so get the interfaces while others don't. This is

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08 an impossible sale." Do you see that?
 09 A. Yes, I do.
 10 Q. What was your basis for writing
 11 that?
 12 A. I think it's consistent through some of
 13 the e-mails you have shown me. Mr. Evslin took
 14 the position that they were part of Chicago, and I
 15 have taken the position that they weren't.
 16 Q. Okay.
 17 A. And that if they're not part of Chicago,
 18 then the Chicago interfaces need to be documented.

72. PAGE 123:02 TO 123:25 (RUNNING 00:01:17.499)

02 Q. Why did you write this is an
 03 impossible sale?
 04 A. My belief, my mission with Windows 95
 05 was to create a product, a platform that was
 06 supported and trusted by the world of application
 07 developers. And part of that trust is belief that
 08 the level of interfaces obtainable by Microsoft
 09 applications was the same as what was available to
 10 other third parties, and this is an expression
 11 that, of that very firm belief.
 12 Q. Okay. Do you remember --
 13 A. And I believe it's consistent through
 14 the documentation, the documents I have seen
 15 today.
 16 Q. Okay. Do you have a
 17 recollection, sitting here, what happened to those
 18 extensions, whether or not they were published?
 19 A. No, I don't. I can't tell you what
 20 iShellBrowser is, at the moment.
 21 Q. Okay. Fair enough. Let's go to
 22 Exhibit 15, then.
 23 (Whereupon, Silverberg-15 is
 24 received and marked for identification.)
 25 Q. Which is M 1010467 through 468.

73. PAGE 124:01 TO 124:11 (RUNNING 00:00:14.896)

00124:01 A. Okay.
 02 Q. Do you remember this e-mail
 03 chain?
 04 A. No.
 05 Q. Okay. Do you have any reason to
 06 doubt that you wrote the top portion of that
 07 e-mail?
 08 A. No, I don't.
 09 Q. Russ S, is Russ Siegelman; is
 10 that right?
 11 A. Russ S, is Russ Siegelman.

74. PAGE 124:14 TO 129:02 (RUNNING 00:04:45.000)

14 Do you recall a situation, in
 15 which Mr. Siegelman informed you and Mr. Gates,
 16 that it would be difficult to change Marvel to
 17 deal with this decision that Mr. Gates made
 18 regarding iShellBrowser?
 19 A. No.
 20 Q. Do you recall whether or not you
 21 advised Mr. Siegelman that there was an
 22 alternative solution that would have allowed
 23 Marvel to develop without having to rely on this,
 24 on those extensions?
 25 A. No.
 00125:01 Q. In your response to Mr. Siegelman

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02 you write, in the second paragraph, at the bottom,
03 "Other ISVs using the extensions are WordPerfect,
04 Lotus, Symantec and Oracle." Do you see that?
05 A. Yes.
06 Q. Do you know what the source of
07 that information was?
08 A. No.
09 Q. Was it your understanding, at the
10 time, that WordPerfect, Lotus, Symantec and Oracle
11 were using those extensions?
12 A. I don't recall, and I'm not sure which
13 extensions. There were many different shell
14 extensions at different layers of extraction, so
15 I'm not sure if the ones being referred to here
16 are the same ones that Russ is referring to.
17 Q. Okay. The e-mail from Mr.
18 Siegelman relates to iShellBrowser extension; is
19 that right?
20 A. Apparently.
21 Q. And you're saying that your
22 response regarding the extensions may not relate
23 to iShellBrowser?
24 A. It does, my response does not mention
25 iShellBrowser, so I can't tell you.
00126:01 Q. Now, you --
02 A. The extensions, the shell extensions, so
03 I don't know.
04 Q. You have no --
05 A. I don't recall. I don't recall this
06 e-mail, so.
07 Q. Okay. So you have no
08 understanding what you meant when you wrote the
09 extensions?
10 A. I would have been referring to shell
11 extensions, and my consistent position that they
12 be made public or Microsoft applications outside
13 of Windows not use them.
14 Q. Was your use of the phrase "the
15 extensions" in reference to extensions that
16 Microsoft was planning not to make public?
17 A. I don't know. I don't know. It sounds
18 like the ones that Russ was using himself.
19 Q. Okay.
20 A. And I don't know whether they were
21 ultimately made public or not. In some sense, as
22 this e-mail makes clear, not making them public
23 was a dumb statement to make, because they had
24 already been documented before Bill's "decision"
25 not to publish them was made, so it was kind of a
00127:01 meaningless e-mail from Bill.
02 Q. Why was it meaningless?
03 A. Because they were already documented, as
04 this e-mail says they were already documented.
05 Q. Was there no significance to a
06 decision by Microsoft not to publish an extension?
07 A. The extension is already out there. The
08 document was already out there. Now, you can
09 either say, you can't recall the document. The
10 document is already out there.
11 All you can either say is we're
12 not going to support them in the future or you
13 publish it. You say, okay, this is an officially
14 supported document, set of APIs.
15 Q. Doesn't Microsoft, saying we're
16 not going to publish those extensions, mean that
17 it won't support those extensions?

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18 A. Not necessarily. It may support them.
 19 It's saying it may not support them. You can't
 20 count them in the future.
 21 Q. Okay.
 22 A. But they were already published in,
 23 apparently, in an earlier SDK, so now all you can
 24 do is say, sorry. We're not going to support them
 25 going forward.
 00128:01 Q. And --
 02 A. Or you can say that we are going to
 03 support them going forward. Or you say, we're
 04 going to change them or something, but the cat's
 05 out of the bag.
 06 Q. Okay. And was that your view,
 07 that was a poor decision to say we're not going to
 08 publish those?
 09 A. Absolutely.
 10 Q. Okay. Did you have any
 11 conversations with Mr. Gates about that decision?
 12 A. I'm sure I did, but I don't recall any
 13 particular ones. I think my position is
 14 consistent and clear that they should be
 15 published. Whether they ultimately got published,
 16 I don't know.
 17 Q. Okay. You said that they were
 18 already published, what's your basis for saying
 19 that?
 20 A. This e-mail right here.
 21 Q. Anything else?
 22 A. Just a recollection of that. It says we
 23 can't just not document, because A, the document
 24 is already out, and B, they all get reverse
 25 engineering, which is also the case.
 00129:01 I mean, people build careers on
 02 undocumented Windows and undocumented DOS, so.

75. PAGE 129:09 TO 129:10 (RUNNING 00:00:12.534)

09 Q. Exhibit 16, from you to Mr.
 10 Struss and Maritz, MS98 0120900 through 02.

76. PAGE 129:18 TO 130:09 (RUNNING 00:00:35.669)

18 Q. All right. Do you recall this
 19 e-mail chain?
 20 A. No.
 21 Q. Any reason to doubt that you
 22 wrote the top portion of that e-mail?
 23 A. No.
 24 Q. Any reason that, to doubt that
 25 you received the portion of that e-mail from Brad
 00130:01 Struss and the attachment from Mr. Henson?
 02 A. No, sir.
 03 Q. What was Athena?
 04 A. Well, it says here Athena was an e-mail,
 05 a PIM.
 06 Q. Um-hmm.
 07 A. Something like that.
 08 Q. What's a PIM?
 09 A. A personal information manager.

77. PAGE 130:12 TO 130:19 (RUNNING 00:00:19.200)

12 And what was that product?
 13 A. I think it was the thing that ultimately
 14 became Outlook Express, but I'm not a hundred
 15 percent sure.
 16 It's not a code name I remember

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17 too well, but that's what I, if I had to guess, it
 18 would be, Outlook Express, but I could, we could
 19 go down a whole long path and that could be wrong.

78. PAGE 130:22 TO 133:08 (RUNNING 00:02:21.100)

22 Was it your view, at the time,
 23 that Athena was just part of Windows, Windows 95?
 24 A. I don't know if it was part of
 25 Windows 95. I wrote Athena is part of Windows. I
 00131:01 don't know if it shipped with Windows 95 or not.
 02 Q. Okay. What --
 03 A. I don't know when it shipped.
 04 Q. I'm sorry. What did you mean
 05 when you wrote, "Athena is just part of Windows"?
 06 A. It's part of Windows.
 07 Q. Which Windows?
 08 A. I don't know at this point, because this
 09 is after the Windows 95 disc went to
 10 manufacturing.
 11 Q. Um-hmm.
 12 A. So it was either part of Windows or not
 13 at that point. Don't know when it shipped.
 14 Q. Do you know what the basis was
 15 for you saying it's just part of Windows?
 16 A. No.
 17 Q. In the next paragraph you write,
 18 "The decision to not expose the shell extension
 19 APIs was based on a set of considerations that are
 20 no longer operable." Do you see that?
 21 A. Yes.
 22 Q. Do you know what the reference to
 23 the shell extension APIs is?
 24 A. Shell extension APIs we have been
 25 talking about. I'm not sure, there are many
 00132:01 different ones, so I'm not sure which ones it's
 02 referring to.
 03 Q. Does it refer back to the same
 04 shell extensions that Mr. Gates decided that
 05 Microsoft should not publish?
 06 A. I don't know. It's possible.
 07 Q. Any other extensions that come to
 08 mind that it might be?
 09 A. Well, I'm not sure which ones Bill was
 10 referring to. Like I said, I don't remember. The
 11 iShellBrowser one was.
 12 Q. Okay.
 13 A. There are many different shell
 14 extensions, so I'm not sure if they were the same
 15 ones, or different ones, or superset, subset.
 16 Q. Do you have any recollection what
 17 the basis was for your writing, "The decision to
 18 not expose the shell extension APIs was based on a
 19 set of considerations which are no longer
 20 operable"?
 21 A. Well, partly, as is explained, at the
 22 time, they were two different shells. And, so
 23 what could be done on one shell versus another was
 24 an issue, and that was no longer true. Once we
 25 combined shell and shipped the Windows 95 shell
 00133:01 and Windows NT, it was just one shell. Those
 02 considerations were no longer operable.
 03 Q. Any others?
 04 A. I'm sure there were others.
 05 Q. Any others that come to mind, as
 06 you sit here?
 07 A. I don't know. It's 14 years ago, so,

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08 no.

79. PAGE 133:12 TO 135:08 (RUNNING 00:01:51.743)

12 You wrote, "The Win95 shell will
 13 be on Win NT and the shell extensions will run
 14 fine there - there is no issue on supporting on
 15 NT."
 16 A. That's right.
 17 Q. Does that refer back to the
 18 answer you just gave?
 19 A. That's right. When Bill sent his
 20 e-mail, there was two shell teams, and now there's
 21 one shell team with one shell code base, running
 22 on both Windows 95, and Windows NT. The shell
 23 extensions are on both, so there's no issue there.
 24 Q. You then wrote, "The win95 team
 25 did 'make darn sure NT is kept in mind' for the
 00134:01 beginning for the shell which is why it ported so
 02 easily."
 03 A. Um-hmm.
 04 Q. What was the basis for you
 05 writing that?
 06 A. Well, I was irritated by a statement
 07 from Mr. Henson in his e-mail about Chicago, not
 08 keeping the Windows NT team in line, and I didn't
 09 agree, and I was irritated by that
 10 characterization.
 11 Q. And your point there was that the
 12 Windows 95 team did keep NT, the team in mind when
 13 it was designing the shell; is that right?
 14 A. That's correct. And it did import super
 15 easily.
 16 Q. Okay. And then you write, "just
 17 a straight adaption." Is that what you mean by
 18 imported easily?
 19 A. Yes. There were some differences in
 20 Unicode, and a couple of, the Windows NT shell.
 21 The Windows NT, at that time, ran on
 22 multiple processors, not just Intel processors.
 23 But there was a digital processor and a MHz
 24 processor, so there was some tweaks that needed to
 25 be made for portability across processors that,
 00135:01 minor, minor little tweaks, but imported super
 02 easily to NT?
 03 Q. Okay. And when you wrote "from
 04 the beginning", what timeframe are you referring
 05 to there?
 06 A. Beginning of Windows 95 shell team.
 07 Q. Okay.
 08 A. Probably '93, something like that.

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 01:31:49.484)