

1 (Recess)

2 THE COURT: Let's be seated.

3 What is next?

4 MR. JOHNSON: We're going to have the deposition
5 of Mr. Silverberg. It is about an hour and a half long
6 though, so what I thought we would do is show about 50
7 minutes and then stop, because I assume you want to let them
8 go before 1:30. We won't be able to complete it is what I
9 am saying.

10 THE COURT: You'll go until about 1:30?

11 MR. JOHNSON: Yes.

12 THE COURT: That is fine.

13 MR. JOHNSON: Thank you, Your Honor.

14 THE CLERK: Ready?

15 THE COURT: Yep.

16 I am not saying that Microsoft should do this, I
17 just want to know, but are you all going to file anything in
18 writing in response to what Novell filed? I mean, you don't
19 have to.

20 MR. TULCHIN: I am prepared to address it at any
21 time, Your Honor.

22 THE COURT: Okay.

23 MR. SCHMIDTLEIN: Judge, did you get copies of --

24 THE COURT: In terms of filing, and it is whatever
25 you all want, and I can have it printed here, and that is

1 what I did this time, or my office can print it in Word form
2 and e-mail them to me. I don't know if the court would
3 allow it to be given to the CSOs here and I could just ask
4 them in the morning if there is anything for me. That may
5 be the easiest for me, or just file them and I will find
6 them.

7 MR. SCHMIDTLEIN: What time are you typically
8 getting here? We could just bring you hard copies first
9 thing.

10 THE COURT: You can do that. Right now I will
11 probably be getting here around 7:30.

12 MR. SCHMIDTLEIN: Okay. I have been stopping
13 across at the Royal Eatery and getting me a cup of coffee.
14 They are incredibly nice fellows.

15 MR. TULCHIN: Would it be appropriate, Your Honor,
16 for some indication to be given to the jury as to the date
17 of the deposition?

18 THE COURT: Sure.

19 (WHEREUPON, the jury enters the proceedings.)

20 THE COURT: Okay. Another videotaped deposition?

21 MR. JOHNSON: Yes, Your Honor. We're going to
22 play portions of the deposition of Brad Silverberg. The
23 deposition was taken in January of '09 and it is about an
24 hour and a half long. Obviously we'll stop it at some point
25 so that you all can go, and we'll pick up again tomorrow

1 morning to finish it.

2 THE COURT: That is fine.

3 Does anybody remember the dates of Mr. Gates'
4 deposition? I don't know.

5 MR. JOHNSON: Yes. Mr. Gates' deposition was
6 actually two different days, Your Honor. As you may recall,
7 3-4, 2009 was the first day, and 5-19, 2009 was the second
8 date.

9 THE COURT: Thank you. All right.

10 (WHEREUPON, portions of the video deposition of
11 Brad Silverberg were played.)

12 MR. JOHNSON: I think that is our stopping point.

13 THE COURT: Have a nice afternoon.

14 MR. JOHNSON: Your Honor, if you would like, we
15 could play ten more minutes. We would be happy to do that.

16 MR. SCHMIDTLEIN: I got the impression that one of
17 the jurors wanted a break.

18 UNIDENTIFIED JUROR: Just a quick restroom break.

19 THE COURT: Thank you.

20 See you all at 8:00 tomorrow morning.

21 Thank you for picking that up.

22 I'll stay here with counsel.

23 (WHEREUPON, the jury leaves the proceedings.)

24 THE COURT: All right.

25 Mr. Tulchin, I think I ought to address the motion

1 to cure instruction about anticompetitors and about whether
2 or not the fact that the lawsuit was filed within the
3 limitations is sufficient to say we ought to give the jury
4 an instruction about the argument that they didn't say
5 anything back then. I think those are the two issues.

6 MR. TULCHIN: Thank you, Your Honor.

7 First, with respect to the request by Novell for
8 what they call a curative instruction about portions of my
9 opening, when I was providing the Court's preliminary
10 instructions, there are a couple of important things to be
11 said, Your Honor.

12 The first is that right at the outset of Mr.
13 Johnson's opening statement he said the following: Novell
14 wanted nothing more than to compete on the merits of its
15 products. Microsoft, however, had other plans. Microsoft,
16 as you were told yesterday, has a monopoly in operating
17 systems. The evidence will show that Microsoft was
18 threatened by Novell's applications and middleware products
19 and took anticompetitive actions against those products in
20 order to protect its operating system monopoly.

21 So Mr. Johnson started, and that was right out of
22 the box, with the very thing that I referred to later, the
23 contention that Microsoft took anticompetitive actions
24 against those products in order to protect its operating
25 system monopoly.

1 Secondly, Your Honor, and I know the Court will
2 remember that we had a discussion last Thursday by
3 telephone, and Your Honor was in Baltimore and it was a
4 telephone conference, and among other things we discussed
5 the preliminary jury instructions. On page 19 of the
6 transcript the Court was saying, and I won't quote the whole
7 thing, Your Honor, but you made reference to the fact that
8 you were not going to decide every issue about the
9 preliminary instructions, that you were going to reserve and
10 do some of this at the end. And you said it seems to me I'm
11 giving enough that in opening statements you -- I don't want
12 to tie one side's hands or the other. I want you all to be
13 able to fairly argue the case.

14 Mr. Holley responded with I think I understand
15 your point, that the layers have some leeway in openings to
16 say what they think the relevant standards are, but the
17 Court does not want to be dictating that at the very outset
18 of the case. The Court, that is basically it, and you guys
19 are good lawyers on both sides and there are issues. I want
20 you to be able to fairly argue the case.

21 So it was pretty clear last Thursday that both
22 sides were going to have some leeway. The instructions that
23 the Court actually gave to the jury on Monday, and I'm happy
24 to hand up a piece of paper that contains the relevant part,
25 Your Honor, but I think the Court will remember, and you

1 said this is just to give you a very, very general guide,
2 that Microsoft wilfully maintained its monopoly in the P.C.
3 operating system market by engaging in anticompetitive
4 conduct, including conduct to thwart the development of
5 Novell's WordPerfect.

6 Then you went on to say Quatrapro as well, and I
7 won't quote all that. Then you said, quote, you can tell
8 from the language that it had to maintain its monopoly by
9 engaging in anticompetitive conduct, and I'm omitting a
10 sentence, and then you said again Novell realizes it must
11 show that Microsoft's anticompetitive conduct, if you find
12 any, engaged in during the period, injured Novell and its
13 business or profit, and that is the way it was reported,
14 during the relevant period of time.

15 What I told the jury yesterday is exactly
16 consistent, Your Honor, with what you said the day before,
17 and if it is slightly different it was consistent also with
18 the leeway that the Court explicitly said last Thursday we
19 were permitted. It was also 100 percent consistent with
20 exactly what Mr. Johnson said at the outset that Novell
21 would prove.

22 The slide that we put in front of the jury says
23 this: In order to prove its claim Novell must establish,
24 among other things, that Microsoft wilfully maintained its
25 monopoly in the operating system market by engaging in

1 anticompetitive conduct against Novell's products during the
2 time Novell owned those products. The words are not
3 identical to the ones that the Court used, but the substance
4 is identical. The Court said --

5 THE COURT: I was a little surprised, but I
6 thought there was a slide about business justification.
7 Maybe I am wrong.

8 MR. TULCHIN: No.

9 THE COURT: I thought there was something about
10 business justification, which got a little bit closer to
11 where I was concerned. Okay. I understand what I said and
12 what you said.

13 MR. TULCHIN: I think, Your Honor, with all due
14 respect, what I said is exactly --

15 THE COURT: What about the other issue? How about
16 the one that they should have filed sooner?

17 MR. TULCHIN: Well, Your Honor, that one I think
18 is very simple. First of all, it is true that they waited
19 ten years. It is fair comment in a case like this to
20 indicate that if the decision not to support the name space
21 extensions in 1994 was in effect going to cause the death of
22 these products, and that is the only thing that Novell
23 complained about in its opening statement, that the fact
24 that Novell waited ten years to bring a lawsuit is something
25 that the jury is certainly entitled to hear.

1 I expect tomorrow that the first witness, the
2 first live witness will testify about how difficult it was
3 and what problems this caused him, and maybe other software
4 engineers at Novell, in trying to write something to get out
5 these products in a timely way. I didn't say that the suit
6 was barred by the statute of limitations. Novell was
7 entitled, apparently, though we have not conceded this, but
8 the courts have ruled that Novell was entitled to wait until
9 2004 with respect to count one. That much is fine.

10 But if Novell had filed its lawsuit, for example,
11 two years and 364 days after the cause of action arose and
12 the statute of limitations were three years, and had come in
13 complaining that the conduct in October of 1994 amounted to
14 a death sentence for these products, I think it would be
15 fair comment to the jury as well to point out how long
16 Novell had waited.

17 It is also true, Your Honor, that it is fair
18 comment, in light of the fact that, as we just saw, the jury
19 is being shown testimony by people whose depositions were
20 taken in 2009 having to do with e-mails and other conduct
21 and strategic thinking and plans and development of products
22 from 1993, four and five. Recollections are going to be
23 somewhat imprecise under those circumstances going back 14,
24 15, 16 years.

25 It is particularly appropriate, Your Honor, given

1 the spoliation issue, which I won't go back into in great
2 detail, because while the Microsoft documents were all
3 preserved because, as the Court knows, there were other
4 proceedings against Microsoft, and these documents were
5 collected and preserved and produced in litigation going
6 way, way back, and besides keeping the bad acts file that
7 Novell kept, no retention notice went out to anyone at
8 Novell until 2004. Mr. Lundberg so testified. Even though,
9 for example, Mr. Hallow, who will be here tomorrow,
10 testified in 2001, with Mr. Lundberg as his lawyer in a
11 different case, about Novell's claims, the very claim they
12 are making here, even though in 2001 Mr. Hallow was giving
13 testimony about this so-called bad conduct that supposedly
14 destroyed these products, Novell did nothing in 2001 to try
15 to collect the documents.

16 In any event, that was more than I planned to say,
17 but I do think that pointing out that there was a ten year
18 delay before complaining, which is the context in which I
19 said this, Your Honor, because there were no complaints at
20 the time, at least none in writing, is absolutely fair for
21 the jury to hear.

22 THE COURT: Thank you.

23 Mr. Schmidtlein.

24 MR. SCHMIDTLEIN: Your Honor, the press picked up,
25 I'm told, in several reports about these very marks about

1 the delay that Novell supposedly took. The law is the law
2 here, and under the law Novell was absolutely entitled to
3 wait. There are good policy reasons that allow companies to
4 wait to bring their cases after the government's case is
5 concluded. Microsoft spent years and years and years
6 fighting relevant market and monopoly power. We don't have
7 to re-go over those fights and re-fight those wars because
8 of the government case. That is part of the benefits and
9 that was part of the policy judgment. They may not like the
10 policy judgment that allows plaintiffs to wait and bring
11 their suits after a government case, but it is entirely
12 appropriate. Exercising rights that we are permitted under
13 the Clayton Act, and for them to get up and argue that
14 somehow that means that our claims don't have merit, that
15 would undercut the whole purpose of the statute. How can we
16 take advantage of the rights afforded to us under the
17 statute, if they are allowed to get up without any knowledge
18 being given to the jury, any instruction, anything about the
19 government case, and say, gosh, I don't want them to know
20 about the government case, and with all of that for them to
21 get up and begin firing these bows and arrows at us saying,
22 oh, this case must be bogus because you waited ten years is
23 entirely inappropriate. We are just asking for an
24 instruction.

25 He can get up and say you didn't complain at the

1 time. That is fine. But to sit there and say you didn't
2 bring the claim until 2004 is entirely inappropriate. If
3 that was the case companies are going to be substantively
4 prejudiced and punished for exercising their rights. I
5 would suggest to you that the statute does not give us a
6 whole lot of rights. That is our main argument on the
7 timing issue.

8 On the jury instruction issue it is one thing to
9 have latitude, but he stood up and misquoted your
10 instructions. We have fought over your preliminary
11 instructions for weeks now with briefs, supplemental briefs,
12 phone calls and hearings and the whole nine yards. To stand
13 up, and this is a critical issue, and Your Honor is
14 painfully aware how important the instructions are to the
15 parties, and to stand up and to misquote materially what
16 Your Honor gave to the jury when they didn't have notebooks,
17 and now they are sitting there with no notebooks and they
18 are putting slides up. That is absolutely inappropriate.

19 The second one, which he didn't even address, was
20 they stand up and he told the jury -- I want to get this
21 right -- for Novell to prevail in this case they have to
22 prove to your satisfaction, as the Court instructed you
23 yesterday, that Microsoft's monopoly in operating systems in
24 Windows came about because of the conduct they claim was
25 wrong. That is outrageous. This case is not a monopoly

1 acquisition case, it is a monopoly maintenance case. He has
2 misstated our theory and he claims that you have instructed
3 them about that.

4 Now, I'm all for throwing a few hard elbows and
5 leeway, but that is frankly just flat out wrong. That is
6 not leeway.

7 Thank you, Your Honor.

8 MR. TULCHIN: Your Honor, on that last point and
9 this very subtle distinction between acquisition and
10 maintenance -- excuse me for a moment -- maybe I didn't make
11 it clear enough, but the Court's instructions, what I said
12 is consistent with the instructions. I didn't use the exact
13 words, but --

14 THE COURT: Why didn't you use the exact words?

15 MR. TULCHIN: Because we had had the call on
16 Thursday --

17 THE COURT: Fine. Never mind.

18 I am going to give an instruction tomorrow to not
19 worry about -- you were told in opening statement about the
20 delaying in filing suit, just disregard that. I mean, the
21 fact of the matter is, and I happen to agree with you, but
22 that is because in summary when I try to craft a remedy,
23 because I didn't want expert witnesses to come in and talk
24 about lost profits years later, that you all would object to
25 that. The fact of the matter is they could do what they

1 wanted to do. If you want to make the point that they
2 didn't complain, that is fine, but just don't refer to when
3 the suit was brought. As to the operating system and the
4 operating system alone they acted within their rights and
5 they shouldn't be penalized for it. You can certainly ask
6 them why they didn't complain at the time and that is fair
7 game.

8 As far as the other is concerned I was a little
9 surprised. I will say, look, and I am not going to point
10 fingers, I am just going to say whatever you were told in
11 opening statement about what the law is about maintaining
12 monopoly power and anticompetitive conduct, I will tell them
13 to listen to me at the end with the instructions. They are
14 not going to remember what you said anyway, but I will give
15 a general instruction just telling them to listen to me at
16 the end of the case about what is anticompetitive --

17 MR. SCHMIDTLEIN: I think that is along the lines
18 of what we have proposed to you.

19 THE COURT: On the other I am just going to say
20 stay away from, and you can ask them about when they
21 complained, but they acted within their rights in waiting --

22 MR. TULCHIN: Of course, Your Honor, but acting
23 within one's rights, and just as in the example I gave, if
24 there is a three year limitations period and you sue two
25 years and 364 days later, you are still acting within one's

1 rights. But it is perfectly appropriate, it seems to me, to
2 point out if there is some emergency --

3 THE COURT: If there was an emergency, and Sun had
4 an emergency and they wanted injunctive relief to take a buy
5 on the product and you wouldn't let them have it. I know
6 that from the history of the M.D.L. proceeding, and I am not
7 going to buy this argument. I happen to agree with you. I
8 happen to think that for a company to wait and to try to
9 recover I guess billions of dollars --

10 MR. TULCHIN: It is, Your Honor.

11 THE COURT: -- by expert testimony is not the way
12 the legal system -- that is exactly why I issued the
13 injunction I did, the preliminary injunction I did in Sun
14 and you objected. As far as I'm concerned they can wait to
15 file the suit. You can ask about that if you thought this
16 was going to destroy your product so much, why didn't you
17 complain about it? That is fair. Just don't mention the
18 fact that the lawsuit was filed ten years later.

19 MR. SCHMIDTLEIN: We can deal with --

20 THE COURT: I understand.

21 MR. SCHMIDTLEIN: -- why didn't you complain at
22 the time, and that will be dealt with. We can't --

23 THE COURT: That is probably the same reason you
24 all hid that you were -- I am sure there are all kinds of
25 things going on. I don't like any of them. Be that as it

1 may, I am going to say, and I am not going to point fingers,
2 I am just going to say listen to my instructions about what
3 the elements are and about what anticompetitive conduct is,
4 and the mention about when the suit was filed just disregard
5 it. That is all I'm going to say.

6 MR. SCHMIDTLEIN: Thank you, Your Honor.

7 THE COURT: Okay. Court is in recess.

8 MR. JOHNSON: Your Honor --

9 THE COURT: The other thing is -- never mind.

10 Nobody objected to it, but that deposition excerpt
11 that I just heard about how the danger -- the second danger
12 was Novell buying WordPerfect and Quatrapro is critical to
13 that, was the witness's, Mr. Silverberg's concern that they
14 were given to give away DOS. I am telling you DOS was in
15 the operating system market, and there was no objection to
16 it, but it brought home to me that when I hear that
17 testimony that one of the concerns, which is exactly what
18 happened, and it wasn't Lotus buying it, it was Novell
19 buying WordPerfect and Quatrapro, when underlying his
20 concern was the fact that they were going to be able to have
21 price competition because they were going to give away their
22 operating system for five cents, and you tell me how that is
23 not indirectly related to the claims in his case, but that
24 is something for the Tenth Circuit to deal with.

25 MR. TULCHIN: That is why there was no objection

1 to it, Your Honor.

2 THE COURT: You can all deal with that if the time
3 comes with the Tenth Circuit. It is there in this case that
4 DOS was in the operating system market, and you all produced
5 testimony that showed the concern was that there was going
6 to be competition, price competition in the application
7 because they were going to give away the operating system.

8 MR. JOHNSON: Your Honor, you had asked us to
9 mention to you when we were going to have a witness that
10 your clerks would probably benefit from hearing. Tomorrow
11 we are going to bring Mr. Adam Hallow the court for
12 testimony. This is one that I think that would be of
13 interest to them --

14 THE COURT: Thank you.

15 MR. JOHNSON: -- to hear.

16 THE COURT: I think they got ought off somehow,
17 Teresa. They got cut off before the break.

18 Thank you, Mr. Johnson.

19 What time? Is he your first witness?

20 MR. JOHNSON: He is our first live witness.

21 MR. SCHMIDTLEIN: We'll finish the --

22 THE COURT: We'll finish this and then --

23 MR. JOHNSON: Go right to him.

24 THE COURT: Thank you very much.

25 MR. JOHNSON: The other thing I wanted to mention

1 is we unfortunately still have a lot of depositions that
2 need to be cleared for us to use. It is proceeding very
3 slowly. I know obviously tomorrow that you are going to be
4 getting aboard an airplane to go home after tomorrow's
5 session, I presume, and I was wondering if you had any time
6 today to --

7 THE COURT: Sure.

8 MR. JOHNSON: -- deal with a couple of
9 depositions.

10 THE COURT: Absolutely.

11 MR. JOHNSON: Right now?

12 THE COURT: Tell me what the issue are and --

13 MR. JOHNSON: Thank you.

14 MR. TULCHIN: Your Honor, these won't be played
15 tomorrow, or at least it is my understanding that they won't
16 be.

17 THE COURT: At least I will know what the issues
18 are. I may not decide them. Obviously I will give you all
19 fair time to respond. The concern for me is that tomorrow
20 is okay, but Monday may not be.

21 MR. JOHNSON: Exactly. That is what I'm concerned
22 about, Your Honor because you're not going to be here
23 Thursday afternoon or Friday.

24 THE COURT: I think my flight is at 5:00.

25 MR. TULCHIN: We haven't been told, Your Honor,

1 who is coming next week or when or whether these depositions
2 will even be played on Monday.

3 THE COURT: I understand, but Mr. Johnson is just
4 trying to resolve the issue. I am not going to prejudice
5 you all in not giving you time to respond.

6 MR. PARIS: The issue, Your Honor, is I am not
7 prepared to address the substance and --

8 THE COURT: Well, let's at least find out what the
9 issues are.

10 If I have a 5:00 flight, what time should I leave?

11 MR. JARDINE: 3:30.

12 THE COURT: 3:30 from the hotel. If I leave here
13 at 3:00 I will have plenty of time.

14 MR. JOHNSON: Your Honor, the first one we want to
15 discuss is the deposition of Mr. Paul Maritz. This is his
16 2009 deposition.

17 Are these extra copies that I could pass up?

18 If I could approach, Your Honor?

19 THE COURT: Sure.

20 MR. JOHNSON: We thought this one was clear, and
21 it was cleared for use until this morning, and then all of a
22 sudden this morning we got a further demand from Microsoft
23 that we add more stuff that they wanted to cross designate,
24 which is apparently on pages 104 through 106.

25 If you open up that tab, Your Honor --

1 THE COURT: Yes.

2 MR. JOHNSON: -- the red stuff there, we had
3 agreed and the parties had met and conferred regarding their
4 initial and cross designations last week, and Novell sent
5 Microsoft an e-mail on Sunday at 3:30 attaching the
6 transcript that the parties agreed upon, the designations,
7 and asking Microsoft to confirm as to the designations to be
8 played to the jury.

9 Now they come in this morning with additional
10 designations, and they are not only untimely but they are
11 beyond the scope of Novell's initial designations. I don't
12 understand why we are getting this.

13 THE COURT: The things I should read begin on line
14 20 on page 103, the things in red?

15 MR. JOHNSON: Yes, the things in red, Your Honor.

16 MR. PARIS: Page 104, Your Honor.

17 THE COURT: 104 and it goes through 106.

18 MR. JOHNSON: I think, unless we're going to have
19 some more, that that is the only dispute. I would like to
20 get this one ready to go. Once you get clearance on one of
21 these transcripts, Your Honor, then you have to do all the
22 technical work.

23 THE COURT: I understand. You all have done a
24 good job on that.

25 So what is the issue?

1 Let me hear from Microsoft.

2 MR. JOHNSON: Sure.

3 MR. PARIS: Thank you, Your Honor. A couple of
4 things. First of all, I object to having to do this now. I
5 got an e-mail at 8:00 this morning and --

6 THE COURT: That is fine. If you're going to be
7 prejudiced I am not going to do it. That makes sense.

8 MR. PARIS: At least as to Maritz, though, I'm
9 aware of the issue. This deals with an issue that came up
10 yesterday in Mr. Johnson's opening and there is going to be
11 obviously, as you could tell from the testimony today, there
12 is going to be a lot of discussion in this case about what
13 is the shell that is at issue. Is it the Chicago shell, the
14 office shell, and what are they and what is the difference
15 and --

16 THE COURT: Before you all leave, you all may
17 understand this. I don't. I don't know that the jury does.
18 I am not sure I know what these APIs do. If I have heard
19 Mr. Tulchin right, WordPerfect was available on the start
20 sign and was also available by icon and this was just a
21 third way of getting to it, and I don't -- I don't know who
22 I am helping or who I am hurting, but somebody better
23 explain this as we go along, because it seems to me to be
24 inconsequential.

25 MR. TULCHIN: We agree, Your Honor.

1 THE COURT: I'm sure you do.

2 MR. JOHNSON: Your Honor, Mr. Hallow will
3 straighten it out for you tomorrow.

4 THE COURT: Thank you.

5 MR. JOHNSON: Trust me.

6 MR. PARIS: At least as to the deposition of Mr.
7 Maritz, I think this is the only outstanding item.

8 MR. JOHNSON: Your Honor --

9 THE COURT: Also, the damage point is pretty
10 telling. I don't know what your expert is going to say, but
11 when you lose the full price of the purchase price in two
12 days after you market it that says something. Somebody
13 better explain that to me too.

14 Excuse me.

15 MR. JOHNSON: Your Honor, we have experts that
16 will explain --

17 THE COURT: I am sure that you do.

18 MR. JOHNSON: I mean, Your Honor, you know, it is
19 like the jury, you have to wait until you hear the whole
20 story.

21 THE COURT: I will wait until I hear it. I am
22 just telling you.

23 MR. JOHNSON: Understood.

24 What is the issue here?

25 MR. PARIS: I am sorry. On Maritz we added this

1 one extra designation, and it is not a big item, it just
2 deals with again some of this confusion that exists between
3 what is the shell and how it is extensible and what we're
4 talking about here. He speaks a little about it on these
5 pages, and we just think it would be helpful for the jury to
6 hear.

7 THE COURT: Okay.

8 MR. JOHNSON: Your Honor, this designation has
9 zero to do with anything that we designated in this
10 transcript. They may want it in for their defense, but they
11 can do that in their case in chief if they so choose. For a
12 cross designation it has to be something that we have
13 designated that they need to add something for completeness.

14 THE COURT: Their position is is because it is
15 confusing about what a shell is it is for completion.

16 MR. PARIS: And we think it is absolutely
17 responsive to one of their designations.

18 MR. JOHNSON: But that issue, that question is not
19 addressed in the Maritz deposition.

20 THE COURT: I think I understand the issue. If
21 what is addressed I deem to be confusing without explanation
22 or explication, whatever the difference is, I will read that
23 and --

24 MR. PARIS: Thank you, Your Honor.

25 The reality is the jury, as we all know, probably

1 has no clue the meaning of any of these terms, especially
2 the technical ones, so the more that they can see, and where
3 you have Microsoft witnesses up here testifying, and I don't
4 know how much they are absorbing and how much they
5 understand, so if a little bit more background to sort of --

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

7 MR. JOHNSON: Your Honor, when you look at it I am
8 sure that you will not be further educated by this little
9 bit of testimony. I assure you of that.

10 THE COURT: I will probably --

11 MR. JOHNSON: I don't like to confuse the jury,
12 Your Honor. That is what I don't want to do. That is why
13 we are careful with our designations.

14 THE COURT: You are all doing a fine job in a very
15 confusing case.

16 I will refrain from further comment.

17 Off the record.

18 (Proceedings concluded.)
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