

1 THE COURT: Let's get the jury.

2 (Jury present)

3 BY MS. NELLES:

4 Q Mr. Struss, from October 3, 1994 -- I will wait.

5 Mr. Struss, from October 3, 1994 when Mr. Gates decided  
6 not to support the namespace extension APIs to August 24,  
7 1995 when Windows 95 shipped, did Mr. Creighton or anyone  
8 else at WordPerfect/Novell ever complain to you about the  
9 namespace extension APIs?

10 A No, they did not.

11 Q To your knowledge, from October 3, 1994 when Mr. Gates  
12 made a decision not to support the namespace extension APIs  
13 until Windows 95 shipped on August 24, 1995, did  
14 Mr. Creighton or anyone else at WordPerfect/Novell ever  
15 complain to DRG about the namespace extension APIs?

16 A No, not to my knowledge.

17 Q From October 3, 1994 when Mr. Gates decided not to  
18 support the namespace extension APIs until August 24, 1995  
19 when Windows 95 shipped, did any other ISV ever complain to  
20 you or DRG about the namespace extension APIs?

21 A Some other ISVs expressed challenges, but they pushed  
22 through it and shipped their products.

23 Q Other than this lawsuit, did you ever hear from  
24 Mr. Creighton or anyone else that the withdrawal of support  
25 of the namespace extension APIs caused a delay in the

1 release of WordPerfect or Quattro Pro or PerfectOffice for  
2 Windows 95?

3 A No.

4 MS. NELLES: I pass the witness, Your Honor.

5 THE COURT: Mr. Schmidtlein.

6 CROSS-EXAMINATION

7 BY MR. SCHMIDTLEIN:

8 Q Good afternoon, Mr. Struss.

9 A Good afternoon.

10 Q You testified that two of the first wave ISVs that you  
11 had responsibility for, at least at sometime, was  
12 WordPerfect and Lotus; is that right?

13 A That's correct.

14 Q And you only had Lotus for -- I guess only part of the  
15 pre-Windows 95 run up time period, or did you have them the  
16 whole time?

17 A I only had them part of the time, and my boss, Doug  
18 Henrich, had Lotus part of the time as well.

19 Q And Lotus and WordPerfect were Microsoft Office's two  
20 primary competitors; is that right?

21 A I don't know if they were primary competitors, but I  
22 know they were competitors with Microsoft.

23 Q Can you think of any other competitors during that time  
24 period who were developing business application suite  
25 packages?

1 A Borland was involved in some parts of that space with  
2 database products.

3 Q Anybody else?

4 A Those are the ones that come to mind -- that's the one  
5 that comes to mind.

6 Q You testified that one of the goals for both you and  
7 the DRG was to try to make sure that ISVs were able to ship  
8 their products within 90 days of the Windows 95 release,  
9 right?

10 A Yes, that's correct.

11 Q That was part of the First Wave Program, right?

12 A Yes, it was.

13 Q In fact, in order to be a first wave ISV, you had to  
14 commit to trying to ship within 90 days of the launch of  
15 Windows 95, right?

16 A That is correct.

17 Q And neither Lotus nor WordPerfect were able to ship  
18 their products that competed against Microsoft Office within  
19 90 days of the August '95 ship date for Windows 95, correct?

20 A I don't remember the specifics of that, but I believe  
21 from reviewing documents that neither of them made that  
22 window, yes.

23 Q So at the time that Microsoft launched Windows 95 in  
24 August 27 or August 28th of 1995 -- is that right, that was  
25 the time period?

1 A That was the time frame. I don't remember the specific  
2 date.

3 Q You don't remember where you were when it happened?

4 A I do remember the hullabaloo on campus.

5 Q You were there at the big launch, right?

6 A I was on campus. I wasn't in the main tent.

7 THE COURT: Don't feel bad. Neither was  
8 WordPerfect.

9 BY MR. SCHMIDTLEIN:

10 Q So at the time that Microsoft launched Windows 95 in  
11 August of 1995, the only other office productivity  
12 application that launched at the same time was Microsoft  
13 Office, correct?

14 A I don't recall the specific date that Microsoft Office  
15 launched.

16 Q You don't remember that it was launched the same day?

17 A I do not remember that, no.

18 Q Just back up a little bit here. I think you testified  
19 to some of this before. I just want to make sure we've got  
20 it locked down. You worked at DRG from '91 to '96, right?

21 A That's correct.

22 Q You left DRG and worked for some other Microsoft  
23 entity, sidewalk.com, right?

24 A That's correct.

25 Q And DRG's goal was to promote Microsoft's technologies

1 and platforms, right?

2 A It was to promote Microsoft's technology and platforms,  
3 but also to be an advocate for outside software developers  
4 for Microsoft systems.

5 Q When did Microsoft begin promoting Windows 95 to ISVs?

6 A Would have been sometime in 1993.

7 Q And one of the primary ways that the DRG group promoted  
8 Windows 95 was to tell ISVs about all the features in the  
9 operating system that the software developers could take  
10 advantage of, right?

11 A We would talk to them about the functionality available  
12 in the operating system and things they should take  
13 advantage of, yes.

14 Q One of the features that Microsoft promoted to ISVs in  
15 connection with Windows 95 were shell extensions, right?

16 A They were part of the functionality that we talked  
17 about.

18 Q Included within shell extensions were the namespace  
19 extensions, correct?

20 A Yes, the namespace extensions were part of the shell  
21 extensions.

22 Q Microsoft promoted or evangelized the namespace  
23 extensions to ISVs during the run up to Windows 95, correct?

24 A They were one of many features we talked about, yes.

25 Q I mean the namespace extensions were new functionality

1 in Windows 95 that had not been available in prior versions  
2 of Windows, correct?

3 A Yes, that's correct.

4 Q And I think you testified to this, Windows 95 was the  
5 biggest product launch Microsoft had ever had; is that  
6 right?

7 A I don't recall specifically. It was the biggest event  
8 I recall happening on campus.

9 Q I believe you said you began promoting Windows 95 in  
10 '93, and then I think you made reference to a beta release  
11 for Windows 95, correct?

12 A I did talk about a beta release for Windows 95, yes.

13 Q I don't recall whether you sort of nailed down the  
14 specific date that the M6 beta was released. Do you recall  
15 that that was released in June of 1994?

16 A I don't recall specifically the date that was released.  
17 I know it was released shortly after the First Wave Program  
18 came into being, which was --

19 THE COURT: I think we all agree the evidence  
20 shows that's true.

21 BY MR. SCHMIDTLEIN:

22 Q I will ask you to take my word for purposes of my  
23 questions here today.

24 A I believe you.

25 Q Okay. Now during the time period, this early time

1 period in 1993 when you began promoting Windows 95 to ISVs  
2 and the time that the M6 beta was shipped in June of 1994 --  
3 are you with me?

4 A Yes, I'm with you.

5 Q Did the DRG provide any caution, specifically caution  
6 ISVs that the namespace extension APIs might not be part of  
7 the final Windows 95 ship?

8 A We didn't provide specific caution about the namespace  
9 extension APIs. I mean we did talk about the set of  
10 functionality as our plan for releases. And as I've  
11 mentioned early in my testimony, I mean within the software  
12 industry what is part of a beta does not necessarily mean  
13 it's part of the final release, so we were careful in our  
14 communication not to promise that something would be part of  
15 that release.

16 Q I guess I kind of want to explore that. On the one  
17 hand you're out there promoting functionality, right, during  
18 this evangelization period for Windows 95, right?

19 A Yes, we were talking about features.

20 Q You're telling people about all the features that you  
21 expect to be part of the operating system, right?

22 A That is correct.

23 Q And I believe you testified that at least one of the  
24 reasons you did that was to facilitate ISVs being able to  
25 begin planning, you know, making product plans for their

1 products and to begin developing their products, correct?

2 A That's correct.

3 Q But you're also saying -- on the other hand you're  
4 saying but anything could change at any time, so be careful.  
5 How do you reconcile those two?

6 A It's a challenge. Part of it is being proactive. When  
7 a change is about to occur or is occurring, being really  
8 proactive with them to talk with them about that change.

9 Q The namespace extensions were part of the M6 beta that  
10 was released in June '94, correct?

11 A Yes.

12 Q Now --

13 THE COURT: If you want to object to this  
14 question, you can. I'm still, after sitting here for a  
15 month, I'm still not sure that I can articulate what  
16 specific benefit the namespace extension APIs brought. As a  
17 DRG, can you explain that? You may have a better shot at it  
18 than some of the technical people.

19 THE WITNESS: I was actually going to defer to the  
20 technical people because I'm more of --

21 THE COURT: Fine. Fine.

22 Go ahead.

23 BY MR. SCHMIDTLEIN:

24 Q Now I believe you were asked some questions about your  
25 role in the DRG and whether that changed at all as a result



1 of the WordPerfect merger with Novell. Do you recall that?

2 A Yes, I was asked questions about that.

3 Q And you said that you didn't essentially see any change  
4 in your job; is that right?

5 A That's correct.

6 Q Did anybody else at Microsoft express to you after the  
7 merger that they viewed Novell as a stronger and more  
8 dangerous competitor as a result of the merger with  
9 WordPerfect?

10 THE WITNESS: I have a question, Your Honor.  
11 Should I just answer yes or no or can I answer something in  
12 between? Is that --

13 THE COURT: Why don't you answer something in  
14 between. Go ahead.

15 THE WITNESS: I mean Novell NetWare was a  
16 competitor at the operating system level to Windows 95 and  
17 other operating systems Microsoft had. NetWare, that  
18 definitely -- you know, people were aware and had always  
19 been aware of NetWare.

20 BY MR. SCHMIDTLEIN:

21 Q You knew Brad Silverberg, didn't you?

22 A I did know Brad Silverberg.

23 Q Mr. Silverberg was in charge of the Windows 95  
24 development team, or the Chicago team, right?

25 A Yes, he was.

1 Q And do you recall during your deposition seeing some  
2 e-mails that he wrote around the time of the  
3 WordPerfect/Novell merger expressing views about that  
4 merger?

5 A I do recall seeing e-mails from Silverberg, yes.

6 Q And you recall seeing other e-mails from people in  
7 Mr. Silverberg's team, correct?

8 A I remember Silverberg's specifically, but I --

9 Q Isn't it true that Mr. Silverberg and others on his  
10 team expressed greater concerns about WordPerfect and Novell  
11 after the merger from a competitive standpoint?

12 A They expressed concerns about Novell's NetWare  
13 products, the products that competed with Microsoft, which  
14 is different than expressing concern about the work DRG was  
15 doing with WordPerfect.

16 Q Do you recall the people in Mr. Silverberg's group  
17 advocated restricting the technical information that was  
18 made available to WordPerfect after the merger?

19 A I recall there were issues around Windows 95 beta  
20 releases, but not anything around limiting technical  
21 information about the product.

22 Q So I included sort of beta releases and a broader  
23 category of technical information than I should have?

24 A Yeah. The reason why I clarified is because they are  
25 distinctly different.

1 Q You view them as different. The beta release is  
2 technical information obviously about the product, right?

3 A It is. So if you get -- I mean if you got a beta  
4 release, you got everything that was part of that beta  
5 release. I think the specific issue was about, you know,  
6 how many people could actually install that, which is  
7 separate from having individuals in the organization having  
8 the full set of information about Windows 95.

9 Q Were you aware -- aside from Mr. Silverberg, were you  
10 aware of any other Microsoft executives who expressed views  
11 about the competitive threat posed by the Novell/WordPerfect  
12 merger?

13 A Microsoft executives always expressed concern about  
14 competitors. There was a lot of --

15 Q Did any of the --

16 A -- healthy paranoia within the organization.

17 Q I'm sorry?

18 A There was a lot of healthy paranoia within the  
19 organization.

20 Q I won't get into a debate about healthy paranoia, but  
21 do you recall Mr. Gates expressing views about the  
22 Novell/WordPerfect merger?

23 A I do not recall Mr. Gates expressing that.

24 Q I'm going to show you what we're going to mark as  
25 PX154. This is in evidence.

1 Do you remember when -- you recall that the  
2 Novell/WordPerfect merger occurred sometime in the spring of  
3 1994?

4 A I recall it occurred sometime in '94. I don't recall  
5 specifically when.

6 Q This is -- PX154 is an e-mail from Mr. Gates to  
7 executive staff and direct reports. It is cc'd to a number  
8 of people. The subject was Novell. If you will turn to the  
9 second page at the very top there,  
10 Novell/WordPerfect/Quattro Pro. This was around the time  
11 period that Novell, WordPerfect and Quattro Pro all were  
12 merged together, correct?

13 Take my word for it.

14 A I'll take your word for it.

15 Q The first sentence there reads, the merger of  
16 Novell-WordPerfect and acquisition of Quattro Pro by Novell  
17 changes our competitive framework substantially. The  
18 already intensely competitive software business has become  
19 even more competitive.

20 Do you recall Mr. Gates or anybody else expressing that  
21 sentiment around the time of the Novell/WordPerfect merger?

22 A I haven't seen this document before and I don't -- you  
23 know, I don't recall specifics about that competition. The  
24 competition was always something, you know, front and center  
25 within Microsoft.

1 Q Well, historically you had been -- you had had  
2 relationships and you had had contacts with people at  
3 WordPerfect, right?

4 A That is correct.

5 Q And senior executives at Microsoft, Mr. Gates and  
6 others, expressed views about sort of how the competitive  
7 relationship between Microsoft and WordPerfect changed after  
8 the Novell merger. My question to you is did that filter  
9 down to you?

10 A It had no change on how I dealt with the software  
11 developers that DRG worked with. So I don't recall the  
12 impact that it had. I mean we always took pride in saying  
13 these are the developers we work with and giving them equal  
14 access to information was a big point of pride of our teams.

15 Q So aside from the Mr. Silverberg issues that we  
16 referenced before and the interim builds and the beta  
17 issues, you don't recall any other issues about providing  
18 betas or technical information arising after the Novell  
19 merger?

20 A Aside from what we've discussed, I don't -- there was  
21 no -- I wasn't asked to change how I worked with  
22 WordPerfect.

23 Q Changing subjects here. Is it fair to say that  
24 WordPerfect kept its distance during its discussions with  
25 Microsoft because of the fact that WordPerfect competed

1 directly with Microsoft Word and Microsoft Office?

2 A WordPerfect, you know, wouldn't be the ones to bring us  
3 in and show us demos of their upcoming products. So they  
4 were careful. They were guarded.

5 Q Do you recall during your deposition saying that they  
6 kept their distance from Microsoft because of the  
7 competitive concerns?

8 A I could see that as something I would say, yes.

9 Q And, in fact, you recognized that WordPerfect was very  
10 careful not to reveal too many specifics to Microsoft about  
11 the particular development work it was doing on WordPerfect,  
12 right?

13 A They were careful what they told us. Even though Tom  
14 and I had a good relationship, Tom was just careful.

15 Q Just to be clear, I mean WordPerfect was wary of  
16 Microsoft learning about competitively sensitive details  
17 about WordPerfect's development work and that information  
18 being somehow transmitted from your group to people in the  
19 Microsoft Office group, right?

20 A I don't know that Tom ever told me that specifically,  
21 so that would be inferring that.

22 Q You clearly got the impression that WordPerfect was  
23 wary of sharing details with Microsoft, correct?

24 A That's accurate to say.

25 Q As you said, because of that -- let me step back.

1           During your promotional efforts and your interactions  
2 with ISVs, would ISVs sometimes show you demos of their  
3 products before they were released to market?

4       A     They would, yes.

5       Q     But WordPerfect never did that, did they, for  
6 Microsoft?

7       A     Not that I recall.

8       Q     And am I correct in response to these concerns that  
9 sort of WordPerfect had, that you tried to convey to  
10 WordPerfect that they could trust you and the people at DRG?

11      A     Absolutely. I mean trust was a big part of a  
12 relationship with any software development organization, and  
13 even more so WordPerfect.

14      Q     You went out of your way to try to establish or get  
15 WordPerfect to trust you and Microsoft in their dealings  
16 with respect to the development of WordPerfect, correct?

17      A     Yes. I mean it was important for me to accurately and  
18 honestly relay information to them as I would to any other  
19 software developer.

20      Q     Now turning to November of 1993, I believe you were  
21 shown a document earlier today about a WordPerfect Microsoft  
22 meeting in November of 1993. Do you recall that?

23      A     Yes, I do.

24      Q     Now do you recall whether or not WordPerfect ever asked  
25 Microsoft to document the shell extension APIs?

1 A I don't recall a specific request for that, no.

2 Q Do you recall that Microsoft told WordPerfect in 1993  
3 that it was going to document the shell extension APIs?

4 A I don't recall that.

5 Q I believe you were shown DX161. And if you can't put  
6 your hands on it --

7 A Got it.

8 Q It's a relatively small pile.

9 Now just to sort of go back very quickly here, this was  
10 a document that Mr. Cole -- at least the bottom part, which  
11 is sort of the main body of the e-mail Mr. Cole drafted,  
12 right?

13 A That's correct.

14 Q He drafted this on November 15, 1993 regarding a  
15 meeting that Microsoft had had at WordPerfect, right?

16 A That's correct.

17 Q And you attended that meeting, right?

18 A I did.

19 Q And the meeting was -- do you recall was the meeting in  
20 Salt Lake City or in Orem?

21 A It was in Orem.

22 Q And I believe you testified that you believed  
23 Mr. Creighton and Mr. Moon were present at the meeting?

24 A Yes, that's correct.

25 Q But the document refers to around ten WordPerfect guys



1 who attended the meeting, right? Do you see that up there?

2 A I do see that, yes.

3 Q You reviewed this document in preparation for your  
4 testimony?

5 A I did review this, yes.

6 Q You are welcome to read through it, but I'm assuming  
7 you know this document pretty well here today?

8 A I do.

9 Q And you don't recall any of the other people who were  
10 present from WordPerfect for that meeting?

11 A I don't. By name, the people I knew were Tom and Dave  
12 Moon.

13 Q Were there software developers there for WordPerfect?

14 A It was a mix of -- yeah, it was a mix of different  
15 people within the development organization. There may have  
16 actually -- could have also been marketing people as well, I  
17 don't recall. The fact that we included Jeff Thiel from our  
18 marketing side, I think by nature kept the discussion on a  
19 little bit higher level.

20 Q I believe you testified earlier that you didn't recall  
21 specific APIs as being discussed; is that right?

22 A That's correct.

23 Q And you didn't -- let's just go down to the paragraph  
24 that starts they were very happy about us deciding to  
25 document the shell extension. Do you see that?

1 A I do see that.

2 Q And does that refresh your recollection that Microsoft  
3 told WordPerfect in November of 1993 that Microsoft was  
4 going to document the shell extensions, the APIs?

5 A Yes. Shell extensions covers a range of functionality,  
6 so some of that, yeah. So it comes in a range of  
7 functionality, yes. Since it's here, I believe we talked to  
8 them about the range of functionality and shell  
9 extensibility.

10 Q Included within shell extensions are the namespace  
11 extension APIs, correct?

12 A That's correct.

13 Q And, in fact, when you go down to the next -- read the  
14 next sentence, I explained conceptually how the  
15 extensibility would work and what controls they would have.  
16 Since they just acquired a document management system, I  
17 forget from who, I assume they will want to plug that in,  
18 plus WP mail and other part of WP office too.

19 That description right there, the functionality that is  
20 being described that WordPerfect wants to implement, that  
21 would require use of the namespace extension APIs, correct?

22 A I mean to be honest, it's sort of hard to tell from  
23 Dave Cole whether that's an assumption of what he's assuming  
24 because there's things like -- he also goes on to talk about  
25 how they want to add a reader -- I forget what it's

1 called -- a viewer for their application, which is part of  
2 the shell extensibility.

3 Q You don't have any doubt that the namespace extensions  
4 were among the APIs that are being discussed here?

5 A I mean give me a moment just to read it again.

6 Q Sure.

7 A No. I don't have a clear reading of it because shell  
8 extensibility covers a range of areas that covers some of  
9 this as well. It could be true, but it also includes a  
10 broader area.

11 Q I believe you testified that WordPerfect never shared  
12 with you details about how they were going to make use of  
13 the namespace extension APIs; is that right?

14 A I mean sort of from the other documents, I talked to  
15 them specifically about the namespace extension APIs at one  
16 point in time, and they said they weren't actively using  
17 them.

18 Q We'll get to those documents in a minute.

19 A Okay.

20 Q You are familiar with the concept of unpublished APIs,  
21 correct?

22 A Yes, I am.

23 Q An unpublished API is an API that Microsoft does not --  
24 does not commit to support in the future, correct?

25 A Sounds like a reasonable definition.

1 Q And you would not advise an ISV like WordPerfect to  
2 write an application that relied upon an unpublished API,  
3 correct?

4 A That's correct.

5 Q When Microsoft decided to withdraw support of the  
6 namespace extension APIs in October 1994, you and others in  
7 the DRG told ISVs like WordPerfect not to rely upon the  
8 namespace extension APIs going forward, correct?

9 A Yes. We proactively contacted the developers and told  
10 them that the status was moving -- those APIs were moving to  
11 an unsupported status and that we couldn't commit to them  
12 being in that same form in future versions of the operating  
13 system.

14 Q You specifically told them not to rely upon those APIs,  
15 correct?

16 A I mean like in looking back at the documents, I would  
17 have stuck to the Q and A, which, again, in my review of the  
18 documents, we were pretty specific that these APIs could  
19 change and may not be supported in the future, so we  
20 recommend not using them. And, you know --

21 Q That was my question. That was your recommendation and  
22 what you communicated to ISVs, not to use them going  
23 forward?

24 A Yes.

25 Q Now you testified that you were aware of internal

1 debate within Microsoft regarding whether Windows NT would  
2 support the namespace extension APIs going forward; is that  
3 right?

4 A Yes, I was aware of the internal debate.

5 Q When were you first made aware of this debate?

6 A I mean from my review of the documents, I know in the  
7 late summer of '94 that debate was going on.

8 Q Do you know when that debate first arose within  
9 Microsoft?

10 A I do not.

11 Q But you believe that you learned about the debate  
12 before Mr. Gates's decision to de-document the namespace  
13 extension APIs in October '94; is that right?

14 A DRG was asked to contact software developers to  
15 understand what they were using of the overall shell  
16 extension. That narrowed more focus on the namespace APIs  
17 because I knew there was disagreement between the Windows 95  
18 team and the Windows NT team about what the medium and  
19 long-term way to support that was.

20 Q The namespace extension APIs were invented in 1993,  
21 right?

22 A I don't recall specifically when they were invented. I  
23 mean --

24 Q The namespace extension APIs were included, as we've  
25 talked about, in the June 1994 M6 beta release, correct?

1 A Correct.

2 Q So was this debate between the Windows 95 group and the  
3 Windows NT group about these APIs, did that start before the  
4 M6 beta was released?

5 A I don't know.

6 Q I take it you weren't personally invested in this  
7 debate; is that right?

8 A I mean DRG was invested from the point of view that we  
9 wanted to direct ISVs to the right way to do things.

10 Q But you didn't pick sides in the debate?

11 A Not that I recall, no.

12 Q So is it fair to say, given your lack of recollection  
13 here about some of these timing issues, nobody from DRG told  
14 any ISVs, including WordPerfect, about this internal debate  
15 within Microsoft when the M6 beta was released in June 1994?

16 A No recollection of any communication happening around  
17 that.

18 Q Now you understood that with the M6 beta that was  
19 released in June '94, that ISVs and the first wave  
20 participants would take that beta release and would begin  
21 using that as part of their development plans; is that  
22 right?

23 A Yes. The goal of releasing that to them was to allow  
24 them to start their software development.

25 Q And, in fact, as I think you testified, the whole

1 purpose of releasing betas -- at least one of the purposes  
2 of releasing betas, I should say, was to facilitate ISVs  
3 being able to get their products ready to ship at or around  
4 the time that Windows 95 was released, right?

5 A Yes, that's correct.

6 Q Because if ISVs didn't begin developing their products  
7 until the final version of Windows 95 was ready, then these  
8 applications wouldn't be ready to ship any time around the  
9 launch of Windows 95, right?

10 A I mean it's accurate to say that the larger and more  
11 complex your product is, the longer it takes to prepare them  
12 for a new operating system release, especially if you're  
13 going to take best advantage of it.

14 Q And I think you testified Microsoft didn't want that.  
15 Microsoft wanted applications ready at the Windows 95  
16 release, right?

17 A Absolutely.

18 Q Because if the applications weren't ready, that was  
19 going to impact Windows 95 sales, right?

20 A The more applications that were available, the better  
21 received Microsoft felt Windows 95 would be.

22 Q Now between the time of the M6 beta release in June '94  
23 and October 1995 -- or '94 when Mr. Gates made his decision,  
24 this time period in 1994 --

25 A Okay.

1 Q -- nobody within the DRG group told ISVs about the  
2 internal debate at Microsoft about whether or not there was  
3 going to be ongoing support for the namespace extension  
4 APIs, correct?

5 A What was the end date on that time frame?

6 Q The date when Mr. Gates made the decision, which I  
7 believe is October 3rd, 1994.

8 A My recollection is that -- I mean part of the survey  
9 and that second follow-up survey specifically about the  
10 namespace APIs, during that point in time, it wouldn't just  
11 be doing this random survey. We're looking at how these  
12 APIs can be supported over the long term, so we're trying to  
13 understand how you're using them and if you're using them.

14 Q The survey was done I believe in September of '94?

15 A That's correct.

16 Q So just weeks before Mr. Gates's decision, correct?

17 A That's correct.

18 Q Between the survey period in September of '94 and the  
19 June '94 beta release -- are you with me?

20 A Yes, I am.

21 Q During that time period, nobody at DRG told ISVs about  
22 this internal debate within Microsoft, correct?

23 A I'm not aware of any communication to that regard.

24 Q Let me show you what has been marked as PX1. Now PX1  
25 is an October 3rd, 1994 e-mail from Mr. Gates to a number of



1 different people regarding the decision about whether or not  
2 to document the namespace extension APIs, correct?

3 A That is correct.

4 Q And you received a copy of this e-mail, right?

5 A I did.

6 Q Did you follow up or respond to Mr. Gates's e-mail in  
7 any way?

8 A I don't believe I did respond to his e-mail.

9 Q Did you follow up with him either in person or by  
10 telephone about the contents of this e-mail?

11 A Pretty certain I did not.

12 Q You didn't ask him for any clarification or explanation  
13 about the decision that is set forth in PX1?

14 A I did not.

15 Q Now after you received PX1 from Mr. Gates, did you  
16 contact anyone at WordPerfect to tell them about the  
17 decision to withdraw support for the namespace extension  
18 APIs?

19 A After Mr. Gates's decision, I mean my team worked  
20 with -- the developer relations team worked with other  
21 groups within Microsoft to put together communication to our  
22 developers about the change in the API status.

23 Q Who was involved in putting together that document  
24 specifically, do you remember?

25 A I mean Scott Henson was involved on my team because

1 I've seen one of the other e-mails where he's leading that.  
2 I know I was involved in working closely with him. Beyond  
3 that, I don't recall. It would have been likely somebody  
4 from the Windows 95 marketing team.

5 Q Did Mr. Gates have any contact with you about the  
6 message that would be sent to ISVs?

7 A I recall no such communication.

8 Q And let's look at paragraph -- the very top it says,  
9 it's time for a decision on IShellBrowser. That's one of  
10 the namespace extension APIs, right?

11 A That's correct.

12 Q And then going down to the paragraph that begins I have  
13 decided. Do you see that paragraph?

14 A I do.

15 Q And in this paragraph Mr. Gates says, I have decided  
16 that we should not publish these extensions. We should wait  
17 until we have a way to do a high level of integration that  
18 will be harder for likes of Notes, WordPerfect to achieve,  
19 and which will give Office a real advantage.

20 Now when you got this e-mail from Mr. Gates, did you  
21 contact WordPerfect and explain to WordPerfect that  
22 Mr. Gates had decided not to publish the namespace extension  
23 APIs because Microsoft was going to wait until Microsoft had  
24 a way to do a high level of integration that would be harder  
25 for the likes of Notes, WordPerfect to achieve, and which

1 would give Office a real advantage?

2 A I think in this e-mail Mr. Gates laid out a number of  
3 reasons why those APIs were no longer going to be supported.  
4 So he had multiple -- if you read through the entire e-mail,  
5 there are multiple different reasons for that.

6 Q Let me try again.

7 A Okay.

8 Q The decision here, he says, I have decided that we  
9 should not publish these extensions. We should wait until  
10 we have a high way of -- a high level of integration that  
11 will be harder for the likes of Notes, WordPerfect to  
12 achieve, and which will give Office a real advantage.

13 My question is after receiving this e-mail, did you  
14 notify WordPerfect and other ISVs that this was one of the  
15 reasons or was the reason why Mr. Gates had decided to  
16 withdraw support for the namespace extension APIs?

17 A I respectfully disagree that it was the reason for the  
18 decision. I did not -- in my communication with  
19 WordPerfect, that sentence was not something that I quoted  
20 to WordPerfect or any variation thereof.

21 Q You didn't tell -- Notes there refers to Lotus, right?  
22 Lotus Notes?

23 A That's correct.

24 Q That was another one of the ISVs that you had  
25 responsibility for, correct?

1 A At one point in time. I would have to look back at the  
2 list that Scott had compiled for who was being contacted and  
3 who was contacting who to see whether I was the person that  
4 contacted Lotus.

5 Q Can we look at DX3. If you go to the third page of  
6 this document --

7 MR. SCHMIDTLEIN: Can you pull up the list there,  
8 Mr. Goldberg?

9 BY MR. SCHMIDTLEIN:

10 Q I believe you were asked questions before about  
11 WordPerfect, which is at the bottom of that list, right?

12 A Yes.

13 Q That was your alias, which meant that you were the  
14 person who was responsible for contacting WordPerfect about  
15 Mr. Gates's decision, right?

16 A That is correct.

17 Q If you look about halfway down that list, Lotus, do you  
18 see that?

19 A I do.

20 Q Does that refresh your recollection that you were  
21 responsible for contacting Lotus?

22 A It does. I would have been the person that contacted  
23 them.

24 Q Am I correct that you didn't tell Lotus about this  
25 sentence that I just read to you from Mr. Gates's e-mail?

1 A Our communication was focused around the talking points  
2 information in DX3 and that information was not part of  
3 that.

4 Q The next -- if we can go back to PX1. Sorry.

5 In that same paragraph, the next sentence, this  
6 one begins, this means that Capone and Marvel can still live  
7 in the top level of the Explorer namespace, but will run  
8 separately.

9 Now Capone and Marvel were two Microsoft products,  
10 correct?

11 A That's correct.

12 Q I believe you made reference to earlier that Capone was  
13 a Microsoft e-mail client?

14 A That's correct.

15 Q And Marvel was the code name for Microsoft's MSN, or  
16 Microsoft network, correct?

17 A That sounds correct, yeah.

18 Q That was a competitor to AOL; is that right?

19 A Yes.

20 Q And this sentence here -- in this sentence Mr. Gates is  
21 saying that even though he's ordered the withdrawal of the  
22 support for the APIs, Capone and Marvel can still continue  
23 to call upon those APIs, correct?

24 A I don't read it that way actually. So by living at the  
25 top level of the Explorer namespace, I mean my understanding

1 of the namespace extension APIs is they would allow you to  
2 provide that extensibility level, but I wasn't really privy  
3 to what was going on with Capone and Marvel.

4 Q Is it fair to say that you didn't communicate this  
5 information to WordPerfect or Lotus when you contacted them  
6 about withdrawing support for the namespace extension APIs?

7 A That's correct. I mean as if Tom told me something  
8 about their product, I wouldn't communicate that to  
9 Microsoft applications. I also didn't -- if I came across  
10 information about Microsoft applications, I wouldn't  
11 communicate that to WordPerfect or Lotus.

12 Q Well, Capone was -- it was already publicly known that  
13 Capone was relying on namespace extension APIs, right?

14 A I don't recall. I mean --

15 Q Now you said that -- let me go back. Let's go back to  
16 the second paragraph here. The second paragraph, the last  
17 sentence -- I'm sorry. The third paragraph. The sentence  
18 that reads, this is not to say that there was anything wrong  
19 with the extensions. On the contrary, they are a very nice  
20 piece of work. Do you see that sentence?

21 A I do.

22 Q Am I correct that that is also information that you did  
23 not transmit to WordPerfect or Lotus when you contacted them  
24 to communicate about the withdrawal of the namespace  
25 extension APIs?

1 A That's correct, I did not tell them that. So I mean he  
2 was -- Mr. Gates was cutting a piece of functionality out of  
3 Windows 95 and they were on a big deadline to ship their  
4 product. So he was cutting something out and trying to give  
5 them some compliments at the same time. The carrot and  
6 stick approach maybe.

7 Q Did he tell you that?

8 A He did not.

9 Q Did Microsoft's lawyers tell you that?

10 A They did not. That's just my reading of it based upon  
11 my knowledge of the internal debates and the level of  
12 internal competition between Windows 95 and the Windows NT  
13 team.

14 Q In fact, you turned around and you told the ISVs there  
15 was a technical problem supporting these namespace extension  
16 APIs, right?

17 A I told them it was unclear how to support that in  
18 Windows NT, which is different than them being a nice piece  
19 of work. Something can be a nice piece of technical work  
20 but not supportable on a different version of the operating  
21 system. So that's very consistent. From my perspective, I  
22 mean when we got this, the bottom line was these APIs would  
23 not be supported in the future. So like there's a lot of  
24 meandering in this e-mail around different topics, but the  
25 bottom line for us was this isn't something that can be

1 sustained in the operating system as it was. We needed to  
2 go out and tell software developers right away about this  
3 change so they could adjust their products, if necessary.

4 Q Do you have PX215? I believe you were shown earlier  
5 today. I'm sorry. I have given you a PX number. I think  
6 you were given a DX version. It's DX17.

7 A Got it.

8 Q This is a September 22nd e-mail, right --

9 A Yes, it is.

10 Q -- from you?

11 In the very first paragraph there, the last sentence,  
12 also, a large part of the interest from ISVs doing this is  
13 because Microsoft is doing it with Capone and Marvel. Do  
14 you see that?

15 A I do see that.

16 Q Does that refresh your recollection that ISVs knew as  
17 of September 22nd, 1994 that Microsoft was using the  
18 namespace extensions for Capone and Marvel?

19 A It refreshes my memory that developers would have known  
20 that Capone and Marvel were planning to use it.

21 Q So at this point there was no issue of sort of keeping  
22 some sort of company secret about the development of Capone  
23 and Marvel, ISVs knew about this, right?

24 A It sounds like they did if I mentioned it in my e-mail.

25 Q Let me show you what we've marked as PX220. Have you



1 seen this document before?

2 A I believe I saw it during deposition. I haven't seen  
3 it since.

4 Q This is an e-mail string around this issue about Marvel  
5 using the namespace extension APIs, correct?

6 A Yes.

7 Q And in this e-mail string, I guess the top e-mail is an  
8 e-mail from Bradsi. Who is that?

9 A Brad Silverberg, who ran the Windows 95 team.

10 Q To Russ?

11 A Russ Siegelman, who ran the MSN group.

12 Q The MSN group was the one developing Marvel, right?

13 A Yes.

14 Q Copied on it were Billg -- that's Bill Gates, right?

15 A That's correct.

16 Q And Paulma, which is Paul Maritz, right?

17 A That's correct.

18 Q And in this e-mail Mr. Silverberg is expressing his  
19 view that Microsoft should document the namespace extension  
20 APIs and not withdraw support for them as Mr. Gates had  
21 decided, correct?

22 A I'm sorry. Can you repeat the question? I was reading  
23 the document.

24 Q Sure. If you need to refresh yourself on this, please  
25 let me know.

1 A That would be great.

2 Q Just take a minute.

3 A Thank you.

4 Okay.

5 Q Now my question was in this e-mail Mr. Silverberg is  
6 expressing his view that Microsoft should document the  
7 namespace extension APIs and not withdraw support for them  
8 that Mr. Gates had just decided, correct?

9 A Actually what I read Mr. Silverberg recommending is  
10 that last paragraph, which says, we should do one of two  
11 things, either support in the future and add the resources  
12 to make it happen or tell ISVs we'll break them in a future  
13 release.

14 Q Well, the very first sentence says, I think we should  
15 do one, make the extensions public. And the one he's  
16 referring to is the number one from the prior e-mail, right,  
17 if we go down?

18 A Yes, that looks correct.

19 Q The one there is overturn the decision not to publish  
20 it and allow Marvel to use it, correct?

21 A That's correct.

22 Q That's what he's advocating in the first sentence here,  
23 correct?

24 A Yes, that looks clear to me.

25 Q Going down further in that first paragraph of

1 Mr. Silverberg's e-mail -- again, this is October 5, '94, so  
2 this is just days after Mr. Gates made the decision to  
3 de-document, correct?

4 A That's correct.

5 Q He says other ISVs using the extensions are  
6 WordPerfect, Lotus, Symantec, and Oracle, correct?

7 A He does say that, yes.

8 Q Did Mr. Silverberg ever tell you that WordPerfect was  
9 using the namespace extension APIs as of October 1994?

10 A He did not.

11 Q Did you ever discuss with Mr. Silverberg whether  
12 WordPerfect was using the namespace extension APIs in  
13 October '94?

14 A The communications that I recall with Mr. Silverberg  
15 were around most of the documents that have been introduced  
16 so far about the status of the call downs.

17 Q Was Mr. Silverberg a recipient on all of your e-mails?

18 A I would have to go through them and review that to  
19 confirm that.

20 This e-mail is also sent before we proactively notified  
21 ISVs. So there is also a gap in the knowledge time on the  
22 thing. So at the point when David Cole met with WordPerfect  
23 in '93, they were excited in general about shell extensions.  
24 I don't know that Brad had a more specific update until we  
25 completed the call down. We started doing the call down on

1 October 12th, which is after this e-mail. So I don't -- I'm  
2 not sure where Mr. Silverberg got his information for this.

3 Q Now you said that your main contact person at  
4 WordPerfect was Tom Creighton; is that right?

5 A That's correct.

6 Q And you said you had a good relationship with  
7 Mr. Creighton?

8 A I believe we did, yes.

9 Q And was there anybody else at WordPerfect who you spoke  
10 with about the namespace extension APIs?

11 A My recollection is talking to Tom Creighton about it.  
12 And then the -- through the documents produced, the e-mail  
13 exchange with Kelly Sonderegger.

14 Q Are you sure -- in your testimony earlier this morning  
15 I thought you hedged a little bit as to whether it was you  
16 or Mr. Henson who had actually had a follow-up with  
17 Mr. Creighton for the information that became part of that  
18 e-mail. Do you have a specific recollection of discussing  
19 the namespace extension APIs with Mr. Creighton?

20 A I do not have a specific recollection of that, but I'm  
21 confident that my name was listed next to WordPerfect. I  
22 would have been the person to contact them when we talked  
23 about removing support for those namespace APIs. It was  
24 part of my job. In fact, I reported on that up to executive  
25 management. I mean given the press environment at that

1 time, like any issue, like it was important to be really  
2 clear in our communication to software developers.

3 Q What do you mean by the press environment at that time?

4 A Just the -- I mean Microsoft as it still is -- you  
5 know, people like to raise issues or raise concerns to the  
6 press. So software developers would on occasion raise  
7 issues to the press to try and get resolution or to try and  
8 bring that information to the public.

9 Q In fact, Mr. Silverberg made reference about concerns  
10 that he had about ISVs making their displeasure known to the  
11 press and others in that e-mail we just reviewed, correct?

12 In the e-mail we just looked at from Mr. Silverberg,  
13 PX220, he made reference to the fact that ISVs wouldn't be  
14 bashful about expressing their displeasure if, in fact, they  
15 learned that Microsoft products were using the namespace  
16 extension APIs at the same time that Microsoft was telling  
17 ISVs not to use those APIs, correct?

18 A That's correct. He did say that, yes.

19 Can I just add an interjection? I mean --

20 THE COURT: No. Just leave it there.

21 THE WITNESS: Okay. I'll leave it.

22 BY MR. SCHMIDTLEIN:

23 Q Now are you aware that Mr. Creighton has been deposed  
24 and asked questions about some of the issues you've given  
25 testimony on here today?

1 A I was not informed of that, no.

2 Q You haven't -- you haven't had an opportunity to review  
3 his deposition testimony on these issues?

4 A I have not.

5 MS. NELLES: Objection, Your Honor, to this  
6 document.

7 THE COURT: I will hear a question, but I don't  
8 see how I won't sustain the objection.

9 BY MR. SCHMIDTLEIN:

10 Q Mr. Struss, I take it -- you said you haven't been made  
11 aware of deposition testimony given by Mr. Creighton?

12 A I have not seen this, no.

13 Q I will represent to you Mr. Creighton has testified in  
14 a manner that is very different from what you've testified  
15 to?

16 MS. NELLES: Objection, Your Honor. Move to  
17 strike.

18 THE COURT: Sustained. Struck.

19 BY MR. SCHMIDTLEIN:

20 Q If you can pull out DX17 again. You were shown this  
21 document a little bit earlier this morning by counsel for  
22 Microsoft, correct?

23 A Yes, I was.

24 Q And I believe you were shown this section on page -- I  
25 guess it's the third page of the document, but it's listed

1 as page 48 at the bottom of the page. Do you see that?

2 A I do see that.

3 Q This is the section on WordPerfect, correct?

4 A That's correct.

5 Q I believe this morning you said you testified that  
6 WordPerfect at that point might have been working with the  
7 namespace extension APIs based on speculation; is that  
8 right?

9 A Yes. Scott's summary included comments like based upon  
10 speculation.

11 Q If you look at the top of the call out, actually the  
12 first section which is on page 48, under WordPerfect, it  
13 says, have they started work. Do you see that?

14 A I do see that.

15 Q It says, very likely based on Tom Creighton's feedback  
16 below, right?

17 A Yes.

18 Q And have they started work, what does that refer to?

19 A Have they started work on any of the shell -- the whole  
20 set of shell extensibility functionality.

21 Q There it says there is no speculation at all. There it  
22 says, very likely based on Mr. Creighton's feedback below,  
23 right?

24 A It does say that, yes.

25 Q What feedback is referred to there?

1 A Tom made the comment there would be, quote, hell to pay  
2 in the press if we changed the interfaces from the initial  
3 release of Chicago to the next release. They will try to  
4 get feedback to us.

5 Q Did Mr. Creighton ever tell you that there would be  
6 hell to pay in the press if Microsoft changed the interfaces  
7 from the initial release of Chicago to the next release?

8 A For this phase of the call down, I believe the call  
9 was -- a survey was done by Scott Henson and the follow-up  
10 communication was done by myself. So I don't recall him  
11 telling me that directly.

12 Q They said they will try to get feedback to us, but they  
13 don't want to tip their hand. Again, that's a reference to  
14 the wariness that WordPerfect had about sharing the details  
15 about their use of the shell extension APIs, correct?

16 A That's correct. At the point in time Scott led this  
17 survey, we were trying to just understand the whole set of  
18 shell extensibilities, what people were using and what they  
19 were looking at using.

20 Q If you go back to the second page of this document,  
21 this is sort of a continuation over from page 1 about  
22 companies that have voiced an interest in the namespace  
23 extension APIs; is that right?

24 A That's correct.

25 Q And, again, the entry for WordPerfect there at the top



1 says, very likely, but detailed info will be difficult to  
2 get. Again, that's a reference to the fact that WordPerfect  
3 was very reluctant and wary of sharing details with  
4 Microsoft about exactly what they were doing with the  
5 namespace extension APIs, right?

6 A That is correct.

7 Q And if you will notice there the next company listed  
8 there is Lotus, right?

9 A Yes.

10 Q And as we've talked about, they are the other major  
11 competitor of Microsoft Office, correct?

12 A That's correct.

13 Q They too were likely using them, but they also --  
14 getting detailed information was going to be difficult for  
15 them as well, right?

16 A That's correct.

17 Q For the same reasons that WordPerfect was reluctant,  
18 Lotus was reluctant too, correct?

19 A I would assume so, yes.

20 Q And this survey -- let's go back to the first page --

21 A Okay.

22 Q -- because this is a little tricky to unravel. Midway  
23 down there it says from Scott Henson. Do you see that?

24 A I do see that.

25 Q And it looks like that at some point might have been an

1 e-mail that he sent and somebody has somehow cut and pasted  
2 it or dropped off the to line, the re line, or the date line  
3 and of all that?

4 A That's correct.

5 THE COURT: So do we have somebody to thank for  
6 that?

7 THE WITNESS: I think when I sent my summary, I  
8 just edited that e-mail. I don't recall if I just cut out  
9 the subject line or was their introductory paragraph, but I  
10 think that was just a summary for executives. I was giving  
11 them the shortest amount to read.

12 BY MR. SCHMIDTLEIN:

13 Q And so when did Mr. Henson do this survey?

14 A I don't know the exact date, but my e-mail reference is  
15 pulling it together from a couple of weeks ago. So I assume  
16 early September.

17 Q So in early September, Mr. Creighton had told Microsoft  
18 that there would be hell to pay if the namespace extension  
19 APIs were changed prior to the finalization of Chicago,  
20 right?

21 A That's correct.

22 Q And when we talked about your entry there for  
23 WordPerfect --

24 A Yes.

25 Q -- going up that first page, I just want to be clear,

1 do you think you had a subsequent conversation with somebody  
2 from WordPerfect or do you think Mr. Henson did?

3 A I believe I would have had a subsequent conversation,  
4 but I don't recall specifically. I do know that I wouldn't  
5 add additional layers of detail unless that conversation had  
6 happened with Mr. Creighton. And, you know, from the sort  
7 of whole time of my narrative, what's interesting to me is  
8 Tom said there would be hell to pay, and it never became an  
9 issue, you know, and this is an indication that they hadn't  
10 begun any work. So my perspective is that he thought it  
11 would be a big issue. And as they realized they are not  
12 using it and Microsoft wouldn't be using it, it became a  
13 nonissue because they would definitely raise it to the press  
14 if it was a big issue.

15 Q But I take it that when you called Mr. Creighton and  
16 surveyed him here in September of 1994, what reason did you  
17 give him for why Microsoft was considering or what -- let me  
18 step back. What reason did you give him for the survey?

19 A That following survey, the sort of second tier survey,  
20 I don't recall specifically, but his -- the comment here  
21 that I made is if Capone -- was sort of summarizing his  
22 comment, that if Capone integrates into the Explorer, then  
23 they will also, we'll figure it out if it's not documented,  
24 is an indication to me that we gave him -- either Scott or I  
25 gave him a preview of what was going to happen. And the

1 fact -- he said basically if Capone was going to do it,  
2 we'll figure how to do it, is an indication to me that he --  
3 that I had previewed the potential decision to him. That  
4 would be the context that would make sense in.

5 Q Now going back to that first page there, the very first  
6 part of Mr Henson's e-mail says, here's how the shell  
7 integration APIs affect our software development plans.  
8 Then he gives a long laundry list under Microsoft there. Do  
9 you see that?

10 A I do see that.

11 Q And in that section Mr. Henson details all of the  
12 various groups within Microsoft that had been doing  
13 development work with the namespace extension APIs, correct?

14 A That's correct.

15 Q Among the groups that were working with the namespace  
16 extension APIs were the Office team. Do you see that?

17 A I do.

18 Q And Capone, we've talked about them before, correct?

19 And Marvel, we talked about them before, correct?

20 A That's correct.

21 Q And then Access. What is Access?

22 A Access is a Microsoft database program.

23 Q Was Access ever part of the Microsoft Office product?

24 A It is now part of the Office program -- product. I  
25 don't know when it became part of Office.

1 Q Did Novell have a competing database program?

2 A I don't recall.

3 Q What's the Ren? There is a reference to Ren, our PIM  
4 group.

5 A I don't recall that. PIM is a personal information  
6 manager. It's just a manager of product information.

7 Q When you reached out to Mr. Creighton to do these  
8 surveys, did you tell him at the time all of these Microsoft  
9 groups were continuing -- were using the namespace extension  
10 APIs?

11 A So this was a point in time before the decision had  
12 been made, so as I wouldn't tell WordPerfect what I knew  
13 Corel was doing, I didn't tell him what I knew Microsoft  
14 Office was doing either.

15 Q When you called back to make the final decision -- with  
16 the final decision and informed him that the namespace  
17 extension APIs were being withdrawn, did you tell him that  
18 Microsoft had been using the namespace extension APIs?

19 A I know that I was clear with him what would be using  
20 them, which of the parts of Windows 95 operating system. So  
21 what was -- what was true on September -- you know, early  
22 September was different than what was true beyond that,  
23 meaning once those APIs were moved to that unsupported  
24 status, you know, I believe that these other products, their  
25 plans have changed as ISVs' plans may have to change.

1 Q So it's your testimony that after the decision was  
2 made, that all work that was done by Microsoft development  
3 groups stopped with respect to the namespace extension APIs?

4 A I can't vouch for all Microsoft development groups.

5 Q The information about the Office team and the work they  
6 were doing, where did you learn that information?

7 A It's something Scott found out. I don't recall how he  
8 did that. I know it was something I didn't do.

9 Q Now if you can pull out DX3 from your pile there.

10 A Okay.

11 Q You were shown this document earlier this morning,  
12 correct?

13 A Yes, I was.

14 Q And this is -- again, this is from October 12th, '94,  
15 and this is a document that pulls together basically the  
16 message -- the Microsoft message that's supposed to go out  
17 to ISVs about the decision to withdraw support for the  
18 namespace extension APIs, correct?

19 A That's correct.

20 Q And the first part of this document are some e-mails  
21 with some Q and As. And then the last part of the document  
22 beginning on -- I guess the fourth page, it looks like a  
23 separate document that was attached in Q and A form,  
24 correct?

25 A Yes, I see that.

1 Q Who drafted this document?

2 A I don't recall who drafted it. I know -- I believe  
3 developer relations was involved in drafting the document,  
4 likely in conjunction with the product teams.

5 Q If you go to the last page, the second page of that Q  
6 and A, the next to last question, it reads, what if I decide  
7 to use some of the undocumented APIs? I am a developer that  
8 has received some of the preliminary documents on the topic.  
9 What will the penalty be? Will you change the interfaces  
10 that had been defined?

11 And the answer provided there is, we will not  
12 arbitrarily change these interfaces, but because of how  
13 tightly these interfaces are tied to internals of the shell,  
14 we cannot guarantee ISVs that try to call into them will  
15 work in future releases of Windows 95, or even between  
16 interim beta builds. There will be no support for ISVs who  
17 use this. It will be completely at their own risk.

18 Is that the message that you all approved to give ISVs  
19 on this subject?

20 A This was part of our talking points to the software  
21 developers, yes.

22 Q And the reference there to between interim beta builds,  
23 do you see that?

24 A I do.

25 Q As of this time, October 12th, 1994, the M6 beta had

1 shipped previously in June, correct?

2 A That's correct.

3 Q There were subsequent betas that were going to ship  
4 after this time period, the October '94 time period,  
5 correct?

6 A That's correct.

7 Q So in this answer what you're saying is that these APIs  
8 might not even be supported or available in the next beta  
9 build of Windows 95; is that right?

10 A We're basically saying we're not going to just change  
11 them to change them, but even in between interim releases  
12 and then beyond Windows 95, these interfaces may be changed.

13 Q In this paragraph you are communicating to ISVs that  
14 the namespace extension APIs might actually be physically  
15 removed before the next beta build, correct?

16 A I read talking about changing them, so not will they be  
17 there or not there. So I mean this is really talking about  
18 are we going to change what was part of M6. The answer is  
19 no, we won't arbitrarily change these interfaces, which is  
20 different than removing them.

21 Q But you're saying you can't guarantee that if an ISV  
22 tries to call into them, they will work even in the next  
23 beta version of Windows 95?

24 A That's correct. That's what we did say.

25 Q Now going back to the previous page, why has Microsoft



1 decided not to publish the namespace extension interfaces.

2 Do you see that?

3 A I do.

4 Q And the first two bullet points there, compatibility  
5 and system robustness. Do you see those?

6 A I do.

7 Q Where did you get the information to put into this part  
8 of the document? Where did your group get that information?

9 A I know those two concerns were concerns of the Windows  
10 NT team and their ability to support them on top of future  
11 versions of Windows NT.

12 Q Did somebody in that group instruct you to put those in  
13 there?

14 A I don't recall.

15 Q Neither the compatibility or system robustness issues  
16 that are mentioned there were noted in Mr. Gates's e-mail  
17 that we looked at, were they?

18 A Can I go back and review Mr. Gates's e-mail?

19 Q Sure.

20 A I don't see Mr. Gates call them out specifically.

21 Q The same is true of this equivalent visual  
22 functionality, that's not mentioned in Mr. Gates's e-mail  
23 either, is it?

24 A That's correct. I mean there are a lot of -- you know,  
25 the level that Mr. Gates is operating at is different than

1 the level of what developers are really caring about in the  
2 applications. So, again, I mean we wouldn't write something  
3 that wasn't true and we know that, you know, from the  
4 Windows -- from our discussions with the Windows NT team,  
5 both compatibility and system robustness were an issue in  
6 supporting those APIs.

7 Q Let's -- if we can go to the first page of DX3.

8 A Okay.

9 Q At the very bottom there this is a section entitled  
10 overview of what has changed. Do you see that?

11 A I do.

12 Q It says, we have changed the status of the APIs, which  
13 is allow objects to be represented in the explorer as if  
14 they were part of the Windows 95 namespace. You have most  
15 likely seen this kind of functionality demonstrated with the  
16 InfoCenter and with Marvel. Do you see that?

17 A I do.

18 Q That's a reference to the fact that Marvel had  
19 apparently been demoed publicly and ISVs were aware of it;  
20 is that right?

21 A I don't necessarily agree with that. I believe it had  
22 been shown internally at Microsoft. Whether or not that had  
23 been termed publicly or not, I don't know.

24 Q Remember a little bit ago we looked at that September  
25 '94 document where you had made reference to the fact that

1 one of the reasons ISVs wanted this was because they were  
2 aware that Marvel and Capone were using the extensions,  
3 right?

4 A I do, but there were multiple ways that that  
5 information can get to developers. You had said there that  
6 it had been publicly demonstrated by Microsoft. There's  
7 frequent leaks to the press about functionality. There  
8 could be many other ways that that information can get out  
9 to software developers.

10 Q Well, based on your prior e-mail, I think your prior  
11 testimony, you were aware that ISVs knew that Marvel was  
12 using namespace extensions, that's one of the reasons they  
13 wanted to use them?

14 A I don't recall mentioning Marvel. I recall mentioning  
15 Capone from the conversations. I don't disagree with you.

16 Q I'm not asking you to take my word for it. I'll show  
17 you the document again. It's DX17. Again, it's that first  
18 paragraph, last sentence.

19 A Okay. I'm refreshed. Thank you.

20 Q Now there is then in capital letters here on the bottom  
21 of DX3, please do not mention Marvel in any of your  
22 conversations. Do you see that?

23 A I do.

24 Q Why is it that you were telling your group don't  
25 mention Marvel in any of the conversations?

1 A Marvel was not released at that point in time. So as  
2 somebody within the systems division, it wasn't something we  
3 had permission to talk about. As if Corel told me their  
4 plans for a release, even if it had been in PC Weekly, I  
5 wouldn't tell WordPerfect about that, because it was a -- I  
6 guess a confidentiality issue.

7 Q You saw from the last document that you knew people  
8 were aware that Marvel was using this, right?

9 A That is correct.

10 Q I mean --

11 A The fact that I knew an internal product was using it,  
12 then even if that had been mentioned in the press and was  
13 known to other software developers is different than me  
14 telling them and confirming about the existence.

15 Q Let's go back and look at -- I'm sorry. Are you  
16 finished?

17 A Yes.

18 Q Let's go back and look at PX1. Again, the paragraph  
19 that starts, I have decided. And the paragraph that says  
20 this means -- this is, again, Mr. Gates's e-mail deciding to  
21 withdraw support for the extensions, right?

22 A That's correct.

23 Q The sentence that begins, this means that Capone and  
24 Marvel can still live in the top level of the Explorer  
25 namespace, but will run separately, right? We looked at

1 this before.

2 A We did.

3 Q Isn't the reason why in capital letters you were  
4 telling people not to mention Marvel was because Mr. Gates  
5 had decided they could still keep using these and you knew  
6 there would be a firestorm in the press if ISVs learned  
7 that?

8 A No, I don't believe that to be true. Marvel was a  
9 competitor to AOL. Marvel wasn't a competitor to any of  
10 those other products. Again, internal, I guess, knowledge  
11 that developers knew about these things. Outside is  
12 different than somebody from developer relations confirming  
13 their existence. Does that make sense?

14 Q Well, the idea that you are telling people not to  
15 mention Marvel at all in discussing the decision to withdraw  
16 the functionality, when you in your prior document  
17 acknowledge that people knew about Marvel, they knew they  
18 were using the namespace extension APIs, that's why they  
19 wanted to use them. Why are you telling people don't  
20 mention Marvel at all? Is it really because you think there  
21 is some secret around Marvel at this point?

22 THE COURT: I think he's answered that question.  
23 Go ahead. Move on.

24 BY MR. SCHMIDTLEIN:

25 Q Now you were shown DX2 earlier today. Do you have that

1 in front of you?

2 A I'll dig it out.

3 Q See if you can dig out.

4 A Got it.

5 Q Again, this is October 25, 1994; is that right?

6 A That's when the top level e-mail was written, yes.

7 Q You were asked questions about the second page, which  
8 is a part of an e-mail that you drafted, correct?

9 A That's correct.

10 Q Now you were asked questions about -- I guess  
11 information that WordPerfect had provided to you about their  
12 development plans for the 32-bit version of WordPerfect for  
13 Windows 95; is that right?

14 A That's correct.

15 Q At this point in time in October 1994, when was  
16 Microsoft projecting to ship Windows 95?

17 A I don't recall specifically. I mean I know there was a  
18 slip -- or shift in the schedule at some point between when  
19 that first beta was delivered and the August launch. I  
20 don't recall exactly when that happened.

21 Q There were many slips in the Windows 95 delivery,  
22 correct?

23 A That is correct. It's a large complex product.

24 Q And it was -- there was a lot of talk in the ISV  
25 community at this point in time about when Microsoft was

1 going to make its next shipment date, right?

2 A It was when we were going to ship Windows 95 was a  
3 constant concern of ours and developer relations and the  
4 software developers we were working with.

5 Q It says here they current -- WordPerfect currently  
6 expects to ship September '95 or around 120 days of Windows  
7 95 ship, right? Does that suggest to you that at that point  
8 Microsoft at least publicly was still clinging to a shipment  
9 date that was 120 days before September of '95?

10 A That would seem reasonable to me. I mean there has to  
11 be documents about when that schedule change happened.

12 Q Not long after this Microsoft announced that it was  
13 slipping to August '95, right?

14 A I believe that to be accurate, yeah.

15 Q That didn't come as a shock to ISVs, did it?

16 A I don't recall the reaction.

17 MR. SCHMIDTLEIN: Your Honor, if we weren't ten  
18 minutes out, I would ask for five minutes to see if I could  
19 get myself wrapped up here. I'm also --

20 THE COURT: I really want to finish with this  
21 witness by 2:00. Do you have much redirect?

22 MS. NELLES: I don't, but I will go as fast as I  
23 can.

24 THE COURT: So look through your notes. We won't  
25 take a recess. A recess consumes time.

1 BY MR. SCHMIDTLEIN:

2 Q If you can pull PX225 back up. It's also DX3. That's  
3 fine.

4 A Okay.

5 Q If you look at the second page there. The paragraph  
6 towards the bottom -- next to the last from the bottom says,  
7 this decision not only affects people outside of Microsoft  
8 but inside the company as well. All applications within  
9 Microsoft which were originally implementing these  
10 interfaces have been required to stop. Do you see that?

11 A I do see that.

12 Q And do you know whether, in fact, that turned out to be  
13 true? Did all of the application groups within Microsoft  
14 stop?

15 A I don't recall specifically.

16 Q Do you recall a product called Athena?

17 A I do because I saw an e-mail about it.

18 Q And you were shown -- you were shown that document at  
19 your deposition, I believe?

20 A Perhaps. I was also shown it this morning.

21 Q And you recall that later around the time of the  
22 Windows 95 ship that someone in your group learned that the  
23 Athena product, which is one of those PIMs I think you made  
24 reference to earlier, was, in fact, using the namespace  
25 extension APIs, correct?



1 A Yes, I saw an e-mail to that effect.

2 Q Mr. Henson was the one who discovered that?

3 A Yes, that's correct.

4 Q He passed that on up the chain?

5 A He passed it on to me, who passed it on up the chain.

6 I'm not sure if we're going to bring that document up,  
7 but it is interesting to note that Mr. Silverberg noted in  
8 his response to me that that Athena PIM was going to be part  
9 of Windows, which all along we had said that items that are  
10 part of Windows, like control panel, file viewer, would  
11 continue to use those interfaces, which to me is different  
12 than Microsoft applications using them. It's different than  
13 the Office group using those interfaces.

14 Q Let's take a look at -- I'll show you that document.  
15 That has been marked as PX324. Is that the document that  
16 you had seen this morning?

17 A Yes, it is.

18 Q The e-mail -- there's three different e-mails that were  
19 part of this document. There is an e-mail that starts at  
20 the very, very bottom of this page from Mr. Henson, correct?

21 A That's correct.

22 Q And in this document Mr. Henson describes learning the  
23 fact that the Athena product was using the namespace  
24 extensions in August 1995, correct?

25 A That's correct.

1 Q And then the e-mail above that one is an e-mail that  
2 you wrote, correct?

3 A That's correct.

4 Q And in that e-mail you are sort of summarizing the  
5 information that Mr. Henson had gathered and you are  
6 forwarding that along up the chain to Mr. Silverberg and  
7 Mr. Maritz; is that right?

8 A That's correct.

9 Q And you are basically asking them sort of for a  
10 decision here as to what we should do?

11 A That's correct. I'm advising them, advising them on  
12 the strategy, yes.

13 Q Because you knew this was a potential problem with  
14 Microsoft, right?

15 A I was concerned about it, yes.

16 Q Mr. Henson certainly thought it was a problem?

17 A Yes. We were both concerned. I wouldn't send an  
18 e-mail to Paul Maritz and Brad Silverberg.

19 Q And Mr. Silverberg writes an e-mail back to you,  
20 correct?

21 A Yes.

22 Q And he says, if we go to the second bullet point up  
23 there -- first of all, did you discuss this with  
24 Mr. Silverberg aside from this e-mail?

25 A Not that I recall.

1 Q It says, the decision to not expose the shell extension  
2 APIs was based on a set of considerations which are no  
3 longer operable. The Win95 shell will be on WinNT and the  
4 shell extensions will run fine there. There is no issue  
5 about supporting on NT. Do you see that?

6 A I do.

7 Q Isn't that one of the issues that was contained in that  
8 Q and A document with the information that you provided to  
9 ISVs?

10 A Yes, it was.

11 Q I mean the information you sent to the ISVs was this is  
12 a problem and this is why we're withdrawing the namespace  
13 extensions, right?

14 A That's correct. In October of '94, we didn't know if  
15 there was a clear path to support on Windows NT, so the  
16 decision was made not to support it. Things change rapidly  
17 within a software company and especially in this case where  
18 there are different power struggles going on. At this point  
19 in time the Windows 95 team had taken over that shell  
20 responsibility so they could then choose whether that  
21 supported Windows NT or not.

22 Q When did the Windows 95 team take over the shell  
23 responsibilities for Windows NT?

24 A I don't recall. I guess I'm basing that on  
25 Silverberg's e-mail.

1 Q Isn't it the case that the Windows 95 team took over  
2 shell responsibility for Windows NT prior to Mr. Gates's  
3 decision in October '94?

4 A I don't know.

5 Q At the time when Mr. Silverberg told you on August 11,  
6 '95 -- this is weeks before Windows 95 is going to ship,  
7 right?

8 A That's correct.

9 Q Mr. Silverberg tells you there is no issue about  
10 supporting NT. The conditions that -- the considerations  
11 are no longer operable. Did you alert WordPerfect of this  
12 information?

13 A Not that I recall.

14 Q Did you tell people in your group in light of this  
15 change, get out the documentation -- the final documentation  
16 on the namespace extension APIs as soon as possible?

17 A I don't know that we -- I mean Silverberg says one  
18 thing in this e-mail, and I don't recall whether or not we  
19 actually changed their status from not supported to  
20 supported. Silverberg is saying something carries its  
21 weight, that doesn't mean that something necessarily becomes  
22 part of the system and part of the documentation.

23 Q Go down to the next paragraph. Mr. Silverberg goes on,  
24 the Win95 did make damn sure NT is kept in mind from the  
25 beginning for the shell, which is why I ported it so easily.

1 He's saying there from the very beginning, from when  
2 Windows 95 took over the Windows NT shell, they kept in mind  
3 this compatibility issue, correct?

4 A That's what Mr. Silverberg says, yes.

5 Q You don't know when this development time period he's  
6 talking about here occurred, do you?

7 A I do not.

8 Q Just a couple more questions for you. You said you  
9 work today for NPower Northwest?

10 A Yes.

11 Q And they are based in Seattle; is that right?

12 A Yes, they are.

13 Q And was Microsoft one of the original founders or  
14 partners of NPower Northwest?

15 A Yes, Microsoft was.

16 Q They have been a very, very significant and important  
17 supporter and donator to NPower Northwest from the  
18 beginning?

19 A That is true, but my testimony here today has nothing  
20 to do with that. In fact, my team at NPower deals with no  
21 Microsoft technology at all. We work with adopting  
22 salesforce.com, which is a major competitor of Microsoft,  
23 for nonprofit use, as well as open source contact management  
24 system.

25 Q There are Microsoft employees on the board of NPower

1 Northwest, correct?

2 A There are.

3 Q Multiple Microsoft employees, correct?

4 A I don't know the current count.

5 MR. SCHMIDTLEIN: That's all I have, Your Honor.

6 THE COURT: A little bit of redirect. I hope a  
7 little bit.

8 MS. NELLES: I know better than to make any  
9 promises.

10 THE COURT: We may go a little beyond two o'clock,  
11 but not more than 2:15. We'll be finished by 2:15.

12 MS. NELLES: Absolutely. I can make that promise.

13 THE COURT: You will be finished before that.

14 REDIRECT EXAMINATION

15 BY MS. NELLES:

16 Q Pull up DX17, please.

17 Mr. Struss, your e-mail here, this top e-mail, that  
18 e-mail was put together and sent after the report by  
19 Mr. Henson that's on page 48 and 49 of this document?

20 A That's correct.

21 Q If we could look at page 48 going to page 49, you see  
22 there is a reference here, you talked about it with counsel  
23 for Novell, about a quote, hell to pay in the press?

24 A Yes, I see that.

25 Q That's hell to pay in the press, correct, not hell to

1 pay?

2 A That's correct.

3 Q And was there ever hell to pay in the press over the  
4 decision regarding the namespace extension APIs?

5 A No, there was not.

6 Q And if I actually can pull Mr. Silverberg's about the  
7 firestorm of protest. Was there ever any firestorm of  
8 protest before the decision not to document -- not to  
9 support the namespace extension APIs?

10 A No, there was never a firestorm of protest.

11 Q And in 17, the reference in your e-mail, the  
12 September 22 e-mail where you -- the paragraph about  
13 WordPerfect and your comment of Capone integrates into  
14 Explorer, they will also figure it out if it's not  
15 documented. This reference to Capone, that's a reference to  
16 the WordPerfect, but that is a reference to the WordPerfect  
17 e-mail client, not the word processor, correct?

18 A That would make sense because Capone was Microsoft's  
19 e-mail client.

20 Q I think you and counsel and the Court all agreed on  
21 cross-examination that we would use the date the M6 beta  
22 release was shipped on June 9, 2004. Do you recall that?

23 A I do.

24 Q And can you do some basic math, since you have your  
25 degree? This is a period of four months before Mr. Gates

1 made his decision and DRG informed ISVs that the namespace  
2 extension APIs would not be supported, is that right, four  
3 months?

4 A I agree with your math.

5 Q Thank you.

6 Did any concerns expressed by Mr. Silverberg or any  
7 others at Microsoft about Novell affect in any way your  
8 willingness to provide support or assistance to Novell after  
9 the merger of Novell and WordPerfect?

10 A Absolutely not. My goal was to get them to ship a  
11 great application as soon as possible after Windows 95  
12 shipped and I stayed true to that until I left the developer  
13 relations group.

14 Q Do you know whether Capone and Marvel were ever shipped  
15 separately from Windows 95?

16 A I do not know.

17 Q Were they part of the operating system product that was  
18 shipped?

19 A I don't recall.

20 Q If we could look at Defendant's Exhibit 3.

21 A Okay.

22 Q I would like to point your attention again to a  
23 sentence that you saw on cross on the second page of this  
24 document. This decision -- the sentence that says, this  
25 decision not only affects people outside of Microsoft but



1 inside the company as well. All applications within  
2 Microsoft which were originally implementing these  
3 interfaces have been required to stop. Do you see that?

4 A I do see that.

5 Q Do you have any recollection that's inconsistent with  
6 this statement or any knowledge that's inconsistent with  
7 this statement?

8 A I do not.

9 Q Going back to your e-mail to Mr. Chase at the top of  
10 this document, again, the second sentence of the first  
11 paragraph, so far Stac, Lotus, WordPerfect, Oracle, SCC  
12 appear to be okay with this.

13 In October 1994, did you have any doubt that what  
14 Mr. Creighton told you and what you reported that  
15 WordPerfect was okay with the decision not to support the  
16 namespace extension APIs was accurate?

17 A It was. I believe that it was not an issue for them.

18 Q Thank you. I have nothing -- oh, wait. Super quick.

19 Can we pull up PX324. If we could just look at the  
20 second paragraph of your e-mail to Mr. Silverberg and  
21 Mr. Maritz where you write, these interfaces were not  
22 planned to be supported beyond the initial release of Win95  
23 and would be doc'd as b-list APIs to be given out on special  
24 request so that other ISVs could develop an app similar to  
25 the MSN client if they so desired. Do you see that?

1 A I do so see that.

2 Q If some ISV like WordPerfect or any other ISV  
3 complained, was the plan to provide documentation on the  
4 namespace extension APIs?

5 A Yes. I mean we had a way to provide them as b-list  
6 APIs.

7 Q Did anyone ever complain such that DRG, in fact,  
8 provided documentation on the namespace extension APIs?

9 A Not that I can remember, no.

10 Q In the next sentence you wrote, as a result of this  
11 change, we proactively notified ISVs, Stac, Symantec,  
12 Netsoft, Oracle, et cetera, who were actively developing  
13 using those interfaces?

14 Why didn't you include WordPerfect in this e-mail list?

15 A I don't know. I don't know whether they are part of  
16 the et cetera or the fact that they weren't actually  
17 developing or Tom had told me they weren't actually  
18 developing, so I excluded them from that list.

19 Q The second to last sentence of the same paragraph you  
20 wrote, this caused significant changes in many of their  
21 development plans, but they understood and pushed forward.  
22 What did you mean by that?

23 A I meant I know that some of those companies, both Stac  
24 and Symantec, had already invested a fair amount of time in  
25 using those APIs when that change was made, and they

1 understood that change because they understood that's the  
2 nature of software development, things change. They aren't  
3 happy with it, but they pushed ahead and still released  
4 products shortly after Windows 95 went out.

5 MS. NELLES: Thank you, Mr. Struss.

6 Your Honor, in time.

7 THE COURT: Mr. Schmidtlein, any questions?

8 RE CROSS-EXAMINATION

9 BY MR. SCHMIDTLEIN:

10 Q This is the first time we've heard about the b-list  
11 APIs. So did you ever see any b-list API documentation?

12 A I've seen b-list API documentation. I don't know if it  
13 was for the namespace extension though.

14 Q You have never seen b-list API documentation that was  
15 ever created or sent to any ISV for the namespace extension  
16 APIs, correct?

17 A I don't recall that.

18 Q You were asked a question about whether, in fact, there  
19 was ever any hell to pay in the press or whether, in fact,  
20 there was any firestorm regarding the withdrawal of the  
21 namespace extension APIs. Your testimony is you don't  
22 recall that, correct?

23 A That's correct.

24 Q If you had told WordPerfect and other ISVs that the  
25 reason that the namespace extension APIs were being

1 withdrawn was because, to use Mr. Gates's words, Microsoft  
2 wanted to wait until they had a way to do a high level of  
3 integration that would be harder for the likes of Notes,  
4 WordPerfect, and others to achieve, and would give Office a  
5 real advantage, if you told ISVs that after you had  
6 withdrawn the APIs, do you think there would have been hell  
7 to pay in the press and a firestorm?

8 A I don't know what their reaction would have been.

9 Again, I think Mr. Gates's reason for the decision can be  
10 different than the technical reason -- the real technical  
11 reasons we outlined to developers about why that didn't  
12 happen. It's a complex decision.

13 MR. SCHMIDTLEIN: No further questions.

14 THE COURT: Thank you very much. Tomorrow morning  
15 at eight o'clock. We'll go until 2:00, and we'll give you  
16 the same schedule on Wednesday. Thursday we'll stop at  
17 1:30. On Friday, we'll go until 4:00. Is that right? 3:30  
18 to 4:00 on Friday. Thursday, I understand, we have to stop  
19 early. I will stay here with counsel just for a moment to  
20 make sure they don't need me.

21 (Jury excused)

22 THE COURT: I know you need two decisions from me  
23 on the motion to reopen and on some of those documents. I  
24 just as soon -- I can hear it now if you want me to, but I  
25 just as soon think about it for another day. And then I

1 think that's -- I am working on tentative instructions,  
2 which I'm going to try to get to you all I hope tomorrow and  
3 then just have you all look them over and then see how you  
4 all want to respond, orally or in writing, or not at all.

5 Anything further?

6 MR. TULCHIN: Just very quickly, Your Honor. I  
7 want to preview a possible issue. I hope it's not an issue.  
8 But, of course, we were operating on --

9 THE COURT: No. I understand. What day is the  
10 problem? Friday?

11 MR. TULCHIN: Friday could be a big problem in  
12 terms of getting the right people here to fill time until  
13 4:00.

14 THE COURT: If you can't do it, you can't do it.

15 MR. TULCHIN: We're going to scramble today.

16 THE COURT: Let me know as soon as possible so I  
17 can tell the jury.

18 MR. TULCHIN: I will, Your Honor.

19 THE COURT: Thank you for telling me. If you know  
20 we're going to stop at 1:30, let me know and I'll tell the  
21 jury. If you can solve the problem, all the better.

22 MR. TULCHIN: We'll try to work this out, Your  
23 Honor.

24 (Whereupon, the trial was continued to Tuesday,  
25 November 29, 2011 at 8:00 a.m.)