# **EXHIBIT 66**

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Page 1
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2
    UNITED STATES DISTRICT COURT
     FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
 3
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 5
    THE SCO GROUP, INC., a Delaware Corporation,
 6
 7
                           Plaintiff,
                          2:04CV00139
                vs.
10
    NOVELL, INC., a Delaware Corporation.
11
12
                           Defendant.
13
14
15
16
17
       VIDEOTAPED DEPOSITION OF MAUREEN O'GARA
18
                Friday, March 23, 2007
19
                      11:00 a.m.
20
21
22
23
     Reported by:
24
     Joan Urzia, RPR
     JOB NO. 192768
25
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|  | Page 2   |  | Page 4   |
|--|--|--|--|
| 1  |  | 1  | O'Gara   |
| 2  |  | 2  | THE VIDEOGRAPHER: We are now   |
| 3  | March 23, 2007   | 3  | on the record. This is the video   |
| 4  | 11:00 a.m.   | 4  | operator speaking, Robert Calvert, of  |
| 5  | Roslyn, New York   | 5  | Esquire Deposition Services, offices   |
| 6  |  | 6  | located at 216 East 45th Street, New   |
| 7  |  | 7  | York, New York.  |
| 8  | DEPOSITION OF MAUREEN O'GARA, held   | 8  | Today's date is March 23, 2007.  |
| 9  | at the Roslyn Claremont Hotel, 1221 Old  | 9  | The time on the video monitor is 11:24   |
| 10   | Northern Boulevard, Roslyn, New York,  | 10   | a.m.   |
| 11   | Pursuant to Subpoena, before Joan Urzia, a   | 11   | We are here at the Roslyn  |
| 12   | Notary Public of the State of New York.  | 12   | Claremont Hotel, located at 1221 Old   |
| 13   |  | 13   | Northern Boulevard, Roslyn, New York   |
| 14   |  | 14   | to take the videotaped deposition of   |
| 15   |  | 15   | Maureen O'Gara in the matter of the  |
| 16   |  | 16   | SCO Group Incorporated, a Delaware   |
| 17   |  | 17   | corporation versus Novell  |
| 18   | and the second of the second o | 18   | Incorporated, a Delaware corporation.  |
| 19   |  | 19   | The venue of this case is the  |
| 20   |  | 20   | United States District Court for the   |
| 21   |  | 21   | District of Utah, Central Division.  |
| 22   |  | 22   | The index number is 2:04-CV-00139.   |
| 23   |  | 23   | Will counsel please voice  |
| 24   |  | 24   | identify yourselves and state whom you   |
| 25   |  | 25   | represent.   |
| -  |  |  |  |
|  | Page 3   |  | Page 5   |
| ١.   | 8  | 3  | <u> </u>   |
| 4 1  |  | l 1  | O'Gara   |
| 2  | APPEARANCES:   | 1 2  |  |
| 2  | APPEARANCES:   | 2  | O'Gara MR. GONZALEZ: Mauriclo Gonzalez of Boies Schiller & Flexner for   |
|  | APPEARANCES:   |  | MR. GONZALEZ: Mauricio Gonzalez  |
| 2 3 4  | APPEARANCES:  DAVIS WRIGHT TREMAINE, LLP   | 2  | MR. GONZALEZ: Mauriclo Gonzalez of Boies Schiller & Flexner for  |
| 2  |  | 2<br>3<br>4  | MR. GONZALEZ: Mauriclo Gonzalez of Boies Schiller & Flexner for plaintiffs the SCO Group.  |
| 2<br>3<br>4<br>5   | DAVIS WRIGHT TREMAINE, LLP<br>Attorney for The Witness<br>1633 Broadway  | 2<br>3<br>4<br>5<br>6  | MR. GONZALEZ: Mauriclo Gonzalez<br>of Boies Schiller & Flexner for<br>plaintiffs the SCO Group.<br>MR. JACOBS: Michael Jacobs from   |
| 2<br>3<br>4<br>5<br>6  | DAVIS WRIGHT TREMAINE, LLP<br>Attorney for The Witness<br>1633 Broadway<br>New York, New York 10019  | 2<br>3<br>4<br>5   | MR. GONZALEZ: Mauriclo Gonzalez of Boies Schiller & Flexner for plaintiffs the SCO Group. MR. JACOBS: Michael Jacobs from Morrison & Foerster for defendant Novelf.  |
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2 (Pages 2 to 5)

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|  | Maureer   | 100                        |   |
|--|---|----------------------------|---|
|  | Page 6  |                            | Page  |
| 1                                      | O'Gara  | 1                          | O'Gara  |
| Ž                                      | other, as appropriate in any other  | 2                          | that I work for a company called G2   |
| 3                                      | instance.   | 3                          | Computer intelligence which has several   |
|  | •   | 4                          | publications which i'm connected with, and  |
| 4                                      | MR. GONZALEZ: Thank you,  |                            |   |
| 5                                      | Ms. Foley. We appreciate that.  | 5                          | one of them is Client Server News.  |
| 6                                      |   | 6                          | Q And in 2003 what publication did  |
| 7                                      | MAUREEN O'GARA, called as a   | 7                          | you write for?  |
| 8                                      | witness, having affirmed to testify   | 8                          | A That same publication.  |
| 9                                      | truthfully before a Notary Public,  | 9                          | Q Is that an on-line publication  |
| 10                                     | was examined and testified as   | 10                         | or a print, hard print?   |
| 11                                     | follows:  | lii                        | A It was at the time both print   |
|  | IUIOWS.   | 12                         | and on-line. On-line insofer as it was  |
| 12                                     | EVALUATION DV   |                            |   |
| 13                                     | EXAMINATION BY  | 13                         | e-mailed to its subscribers.  |
| 14                                     | MR. GONZALEZ:   | 14                         | Q If you can think back to the  |
| 15                                     | Q Good morning, Ms. O'Gara.   | 15                         | early part of 2003, what subjects did you   |
| 16                                     | A Good morning.   | 16                         | generally cover within the computer   |
| 17                                     | Q Please let me know it I need to   | 17                         | industry?   |
| 18                                     | clarify or restate any of my questions  | 18                         | A Well, we were covering, we  |
| 19                                     | -   | 19                         | divide the world up into operating systems.   |
|  | today.  | 20                         | So we were following at the time NT and   |
| 20                                     | A Okay.   |                            |   |
| 21                                     | Q Is that okay?   | 21                         | Linux.  |
| 22                                     | Have you ever been deposed  | 22                         | Q Are you aware that Novell has   |
| 23                                     | before?   | 23                         | issued an announcement claiming that Nove   |
| 24                                     | A Yes.  | 24                         | and not SCO owns the UNIX copyrights?   |
| 25                                     | Q Have you been deposed in this   | 25                         | A Yes.  |
|  | Page 7  | 1                          | Page  |
| 1                                      | O'Gara  | 1                          | O'Gara  |
| 2                                      | case?   | 2                          | Q Do you recall that that   |
| 3                                      | A No.   | 3                          | announcement was first made on or around  |
| 4                                      |   | 4                          | May 28, 20037   |
|  | -,  |                            |   |
| 5                                      | depositions do you have a sense of how this   | 5                          | MR. JACOBS: Objection.  |
| 6                                      | will proceed generally?   | 6                          | Leading.  |
| 7                                      | A Yes.  | 7                          | Q You can answer the question.  |
| 8                                      | Q Great.  | 8                          | A Yes.  |
| 9                                      | What do you currently do for a  | 9                          | Q You do have a recollection  |
| 10                                     | living?   | 10                         | A Yes.  |
| 11                                     | A I'm a journalist.   | 11                         | Q of that?  |
| 12                                     | Q And how long have you been a  | 12                         | And do you recall writing about   |
| 13                                     | journalist?   | 13                         | that announcement?  |
| 14                                     | A Since about 1972.   | 14                         | A Yes.  |
| 15                                     | Q Do you cover a certain  | 15                         | Q I'd like to show you a document   |
| 16                                     |   | 16                         | that will be marked as Exhibit 1080.  |
|  | particular industry?  | 1                          |   |
|  | A Yes, I cover the computer   | 17                         | (Whereupon, Exhibit 1080 was  |
| 17                                     |   |                            | marked for Identification.)   |
| 17<br>18                               | industry.   | 18                         |   |
| 17<br>18<br>19                         | industry. Q And how long have you been  | 19                         | Q It's been bate stamped at the   |
| 17<br>18                               | industry.   | 1                          | Q It's been bate stamped at the   |
| 17<br>18<br>19                         | industry. Q And how long have you been  | 19                         | Q It's been bate stamped at the   |
| 17<br>18<br>19<br>20                   | industry.  Q And how long have you been covering the computer industry?   | 19<br>20                   | Q It's been bate stamped at the bottom SCO 1270695 and it runs in sequence  |
| 17<br>18<br>19<br>20<br>21<br>22       | industry.  Q And how long have you been covering the computer industry?  A Since 1972.  Q What publication do you                     | 19<br>20<br>21<br>22       | Q It's been bate stamped at the bottom SCO 1270695 and it runs in sequence through SCO 1270700.  It's a document that contains an   |
| 17<br>18<br>19<br>20<br>21<br>22<br>23 | industry.  Q And how long have you been covering the computer industry?  A Since 1972.  Q What publication do you currently work for? | 19<br>20<br>21<br>22<br>23 | O It's been bate stamped at the bottom SCO 1270695 and it runs in sequence through SCO 1270700.  It's a document that contains an article entitled Novell to Try to Shoot |
| 17<br>18<br>19<br>20<br>21<br>22       | industry.  Q And how long have you been covering the computer industry?  A Since 1972.  Q What publication do you                     | 19<br>20<br>21<br>22       | O It's been bate stamped at the bottom SCO 1270695 and it runs in sequence through SCO 1270700.  It's a document that contains an   |

3 (Pages 6 to 9)

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|  | Page 10   | l  | Page 12  |
|--|---|--|--|
| 1  | O'Gara  | 1  | O'Gara   |
| 2  | this document?  | 2  | Q And did he say anything about  |
| 3  | A Yes, I do.  | 3  | the effect, the intended effect of the   |
| 4  | Q Does that appear to be the  | 4.   | ennouncement on that date?   |
| 5  | document in which we were just talking  | 5  | A The reason that they were doing  |
| 6  | about in which you wrote about Novell's   | 6  | it, as I understood it, was to confound  |
| 7  | announcement about its alleged ownership of   | 7  | SCO's stock position.  |
| 8  | UNIX copyrights?  | 8  | Q When you say confound SCO's  |
| 9  | A Yes.  | 9  | stock position, can you be a little more   |
| 10   | Q And what is the date of the   | 10   | specific or can you clarify it in any way?   |
| 11   | article?  | 11   | A Well, I think the object of the  |
| 12   | A It's dated May 28.  | 12   | game was to throw a monkey wrench into the   |
|  |   | 13   | works.   |
| 13   | Q Is that consistent with your recollection of the article and the  | 14   |  |
| 14   |   |  |  |
| 15   | announcement?   | 15   | metaphor, a little further?  |
| 16   | A Yes.  | 16   | MS. FOLEY: I'm going to object   |
| 17   | Q Great.  | 17   | to the form of the question.   |
| 18   | Before you published this   | 18   | Do you understand?   |
| 19   | article, did you speak with Novell?   | 19   | Q Well, when you say that they   |
| 20   | A Yes.  | 20   | were trying to confound or throw a monkey  |
| 21   | Q Did you speak with someone named  | 21   | wrench, can you explain that?  |
| 22   | Chris Stone of Novell?  | 22   | A They were trying to upset the  |
| 23   | A Yes.  | 23   | stock price.   |
| 24   | Q And what was Mr. Stone's  | 24   | Q And when you say stock price,  |
| 25   | position at Novell at the time?   | 25   | whose stock price are you referring to?  |
|  | Page 11   |  | - Page 13  |
| 1  | O'Gara  | 1  | O'Gara   |
| 2  | A I believe he was vice chairman.   | 2  | A SCO's.   |
| 3  | Q Would it be sale to say that you  | 3  | Q Did Mr. Stone say anything about   |
| 4  | understood him to be a senior executive   | 4  | harming SCO?   |
| 5  | under whatever title he may have had?   | 5  | MR JACOBS: Objection.  |
| 6  | A Yes.  | 6  | Leading.   |
| 7  | Q And what did Mr. Novell tell  |  |  |
|  | a and matagram. Therefore   | 7  | A Do I answer that then?   |
| 1  |   | 1  |  |
| 8  | you A Mr. Stone.  | 8  | Q Yes, you may.  |
| 8  | you<br>A Mr. Stone.   | 1  | Q Yes, you may.  |
| 8<br>9   | you A Mr. Stone. Q I'm sorry, thank you.  | 8<br>9<br>10   | Q Yes, you may.  A Logically, there wouldn't be any other reason.  |
| 8<br>9<br>10   | you<br>A Mr. Stone.   | 8<br>9   | <ul><li>Q Yes, you may.</li><li>A Logically, there wouldn't be any</li></ul>   |
| 8<br>9<br>10<br>11   | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which  | 8<br>9<br>10<br>11   | Q Yes, you may.  A Logically, there wouldn't be any other reason.  Q So you understood that to be the  |
| 8<br>9<br>10<br>11<br>12   | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novel's public announcement in which it was going to assert its purported  | 8<br>9<br>10<br>11<br>12   | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood.  |
| 8<br>9<br>10<br>11<br>12<br>13   | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which  | 8<br>9<br>10<br>11<br>12<br>13   | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit   |
| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15   | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights? A Well, he informed me of the   | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15   | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28,   |
| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                                     | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights? A Well, he informed me of the substance of what this story is about, that   | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                                     | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28, 2003  |
| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                               | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights? A Well, he informed me of the substance of what this story is about, that they were going to, what's the right word,  | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16                                     | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28, 2003 A Actually, I wrote it the night   |
| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18                         | you A Mr. Stone. Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights? A Well, he informed me of the substance of what this story is about, that they were going to, what's the right word, assert their ownership.  | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18                         | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28, 2003 A Actually, I wrote it the night before.   |
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| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | A Mr. Stone.  Q I'm sorry, thank you.  What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights?  A Well, he informed me of the substance of what this story is about, that they were going to, what's the right word, assert their ownership.  Q Did he say anything about the reasons why they were issuing that announcement on that date?                | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28, 2003 A Actually, I wrote it the night before. Q And published it on May 28, 2003, is that accurate? A That's accurate.              |
| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | A Mr. Stone.  Q I'm sorry, thank you. What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights?  A Well, he informed me of the substance of what this story is about, that they were going to, what's the right word, assert their ownership.  Q Did he say anything about the reasons why they were issuing that announcement on that date?  A Yes, he did. | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22 | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28, 2003 A Actually, I wrote it the night before. Q And published it on May 28, 2003, is that accurate? A That's accurate. Q Thank you. |
| 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | A Mr. Stone.  Q I'm sorry, thank you.  What did Mr. Stone tell you about Novell's public announcement in which it was going to assert its purported ownership of the UNIX copyrights?  A Well, he informed me of the substance of what this story is about, that they were going to, what's the right word, assert their ownership.  Q Did he say anything about the reasons why they were issuing that announcement on that date?                | 8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21       | Q Yes, you may. A Logically, there wouldn't be any other reason. Q So you understood that to be the intent? A That's what I understood. Q If we may go back to Exhibit 1080, the article that you wrote on May 28, 2003 A Actually, I wrote it the night before. Q And published it on May 28, 2003, is that accurate? A That's accurate.              |

4 (Pages 10 to 13)

|          | Maureen O'Gara |   |    |          |   |
|----------|----------------|---|----|----------|---|
|          | -              | Page 14   |    |          | Page 1                                  |
| 1        |                | O'Gara  | 1  | *        | O'Gara                                  |
| 2        | , Q            | Do you know if there's any                        | 2  | Q        | Is it your practice to take             |
| 3        | referen        | ice to your conversation with                     | 3  | notes    | as you're talking with sources?         |
| 4        |                | one that we've been talking about in              | 4  | A        | My notes are more in the way of         |
| 5        | this an        | *   | 5  |          | hrases.                                 |
| 6        | Α              | Yes, I do, in the third                           | 6  | Q        | Phrases that people say to you?         |
| 7        | paragr         |   | 7  | Ā        | Yesh.                                   |
| 8        | Q.             | Okay.   | 8  | â        | So you can capture the words            |
| 9        | Ā              | It begins, "The letter which                      | 9  | they u   |   |
| 10       | â              | You can go ahead and read that                    | 10 | A        |   |
| 11       |                | e record.   | 11 | _        | Right.                                  |
|          |                |   |    | Q        | What do you recall of the exact         |
| 12       | · A            | Is that all right?                                | 12 | words    | Mr. Stone used with you in reporting    |
| 13       | Q              | Yeah.   | 13 |          | the planned announcement?               |
| 14       | A              | "The letter which Novell is                       | 14 | Α        | I can't,                                |
| 15       |                | sed to post to its website today right            | 15 | Q        | Were you on the phone?                  |
| 16       | before         | SCO reports its quarterly results."               | 16 | A        | With him?                               |
| 17       | , Q            | Can you continue?                                 | 17 | Q        | Yes.                                    |
| 18       | -A             | "Says that Novell owns the IP                     | 18 | A        | Yes.                                    |
| 19       | and th         | at SCO merely shares in certain                   | 19 | Q        | What phone were you on?                 |
| 20       | rights         | that it acquired from Novell by way               | 20 | Α        | What do you mean?                       |
| 21       | of the         | original SCO, the old Santa Cruz                  | 21 | Q        | Were you on a house phone, do           |
| 22       | operat         | ion."   | 22 | you ha   | ave a cell phone?                       |
| 23       | Q              | And did you write that paragraph                  | 23 | Α        | Oh, I was on a standard land            |
| 24       | _              | of this article?                                  | 24 | line.    | On, i was on a standard land            |
| 25       | A A            | Yes.  | 25 | Q        | And where was that land line            |
| 1        |                | Page 15   |    |          | Page I                                  |
| 2        | 0              |   | 1  | la and a | O'Gara                                  |
| 3        | Q              | And again, as you sit here                        | 2  | locate   |   |
|          |                | is it your understanding that that                | 3  | A        | In my office.                           |
| 4        | renect         | s your conversation with Mr. Stone?               | 4  | Q        | And where is that office?               |
| 5        |                | MR. JACOBS: Objection.                            | 5  | A        | That office was at 323 Sea Cliff        |
| 6        |                | ading.  | 6  | Avenu    | ie în Sea Cliff.                        |
| 7        | Q              | Does that reflect your                            | .7 | Q        | What was the phone number you           |
| 8        | conve          | rsation with Mr. Stone?                           | 8  | were c   | calling him from?                       |
| 9        | Α.             | Yes.  | 9  |          | MR. GONZALEZ: Objection.                |
| 10       | Q              | The same conversation you just                    | 10 | A        | Do I answer that question?              |
| 11       | testifie       | d about?  | 11 |          | My telephone number was                 |
| 12       | A              | Yes.  | 12 | 516-7    | 59-7025. That's the main number.        |
| 13       |                | MR. GONZALEZ: Thank you. 1                        | 13 | But th   | nere are a number of lines on that      |
| 14       | hav            | ve nothing further.                               | 14 | and It   | 's a reliover kind of thing, and so     |
| 15       |                | •   | 15 |          | ld never know what fine I was on,       |
| 16       | EXAM           | NATION BY   | 16 |          | ner it was an incoming call or an       |
| 17       | BY MR          | . JACOBS:   | 17 |          | oing call.                              |
| 18       | Q              | Ms. O'Gara, do you have any                       | 18 | Q        | So are you saying as to this            |
| 19       | notes          | of your conversation with Mr. Stone?              | 19 |          | rsation with Chris Stone you don't      |
| 20       | A              | No.   | 20 | recall   | whether it was incoming or outgoing?    |
| 21       | Q              | Did you have notes at one point?                  | 21 | A        | That's correct.                         |
| 22       | Ā              | Perhaps.  | 22 | â        | Did you have an understanding           |
| 23       | Q              | Why do you say perhaps?                           | 23 |          | Mr. Stone was purportedly calling you   |
|          |                |   | 24 |          |   |
| 24       | Δ              | D44:MIM 1 (1)   1   1   1   1   1   1   1   1   1 |    |          |   |
| 24<br>25 | A<br>remen     | Because I don't clearly                           | 25 | A        | luring this call?<br>I beg your pardon? |

5 (Pages 14 to 17)

|  | Page 18   |  | Page 20  |
|--|---|--|--|
| 1  | O'Gara  | 1  | O'Gara   |
| 2  | Q Dld you have an understanding   | 2  | little bit on that, on what your lake away   |
| 3  | where Mr. Stone was during this phone call?   | 3  | was versus what he actually said.  |
| 4  | A I believe he was in the Novell  | 4  | MR. GONZALEZ: Objection.   |
| 5  | offices.  | 5  | Q Did he say to you anything more  |
| 6  | Q Just back to 323 Sea Cliff  | 6  | than with respect to the issue of SCO's  |
| 7  | Avenue, is that a personal office of yours  | 7  | announcement, did he simply draw your  |
| 8  | or an office of G2?   | В  | attention to the fact?   |
| 9  | A It was G2 Computer Intelligence   | 9  | A To SCO's announcement?   |
| 10   | was the, what do you call it, the tenant.   | 10   | Q Yes.   |
| 11   | Q Is G2 your company?   | 11   | A You mean their earnings report?  |
| 12   | A Yes.  | 12   | Q Correct.   |
| 13   | Q So but the entity that well,  | 13   | A Okay.  |
| 14   | let me start over again.  | 14   | Q Did he say anything more than  |
| 15   | Would the phone line be in the  | 15   | SCO is supposed to report its quarterly  |
| 16   | name of Maureen O'Gara, or would it be in   | 16   | results on May 28th?   |
| 17   | the name of G2?   | 17   | A He led me to understand that the   |
| 18   | A G2.   | 18   | reason that they were doing it on the 28th,  |
| 19   | Q You don't recall the exact words  | 19   | that they were posting their cease and   |
| 20   | Mr. Stone used. What is your best   | 20   | desist letter was because SCO was, had its   |
| 21   | recollection of what he said to you in the  | 21   | earnings report.   |
| 22   | particular conversation you were recalling  | 22   | Q So I understand you to be saying   |
| 23   | for Mr. Gonzalez?   | 23   | that he led you to understand something,   |
| 24   | A To best answer that question,   | 24   | but I need to  |
| 25   | I'd have to explain that most business  | 25   | A He sald -  |
| ı  |   | l  |  |
|  |   |  |  |
|  | Page 19   |  | Page 21  |
| 1  | O'Gara  | 1  | O'Gara   |
| 2  | O'Gara<br>journalists are not that aware surprisingly   | 2  | O'Gara Q You're onto it. I'm trying to   |
| 2<br>3   | O'Gara<br>journalists are not that aware surprisingly<br>enough of the market, all right? You have  | 2<br>3   | O'Gara Q You're onto it. I'm trying to figure out what you took away from it   |
| 2<br>3<br>4  | O'Gara journalists are not that aware surprisingly enough of the market, all right? You have to remind yourself that there is such a  | 2<br>3<br>4  | O'Gara Q You're onto it. I'm trying to figure out what you took away from it versus what he actually said to you.  |
| 2<br>3<br>4<br>5   | O'Gara journalists are not that aware surprisingly enough of the market, all right? You have to remind yourself that there is such a thing as the stock market, all right?  | 2<br>3<br>4<br>5   | O'Gara Q You're onto it. I'm trying to figure out what you took away from it versus what he actually said to you. A There was no lack of clarity.  |
| 2<br>3<br>4<br>5<br>6  | O'Gara journalists are not that aware surprisingly enough of the market, all right? You have to remind yourself that there is such a thing as the stock market, all right? Maybe the guys at Barons are different, but  | 2<br>3<br>4<br>5<br>6  | O'Gara Q You're onto it. I'm trying to figure out what you took away from it versus what he actually said to you. A There was no lack of clarity. There was no lack of clarity, sir.   |
| 2<br>3<br>4<br>5<br>6<br>7   | O'Gara journalists are not that aware surprisingly enough of the market, all right? You have to remind yourself that there is such a thing as the stock market, all right? Maybe the guys at Barons are different, but most of us aren't, you know, that's not a  | 2<br>3<br>4<br>5<br>6<br>7   | O'Gara Q You're onto it. I'm trying to figure out what you took away from it versus what he actually said to you. A There was no lack of clarity. There was no lack of clarity, sir. Q Well, then what was clear in  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | O'Gara journalists are not that aware surprisingly enough of the market, all right? You have to remind yourself that there is such a thing as the stock market, all right? Maybe the guys at Barons are different, but most of us aren't, you know, that's not a hypersensitivity. And Chris drew my  | 2<br>3<br>4<br>5<br>6<br>7<br>8  | O'Gara Q You're onto it. I'm trying to figure out what you took away from it versus what he actually said to you. A There was no lack of clarity. There was no lack of clarity, sir. Q Well, then what was clear in what he, in his words versus what you took   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | O'Gara journalists are not that aware surprisingly enough of the market, all right? You have to remind yourself that there is such a thing as the stock market, all right? Maybe the guys at Barons are different, but most of us aren't, you know, that's not a hypersensitivity. And Chris drew my attention to the fact that there was, that   | 2<br>3<br>4<br>5<br>6<br>7<br>8  | O'Gara Q You're onto it. I'm trying to figure out what you took away from it versus what he actually said to you. A There was no lack of clarity. There was no lack of clarity, sir. Q Well, then what was clear in what he, in his words versus what you took away from it?   |
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6 (Pages 18 to 21)

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|----|--|-----|---|
|    | Page 22  |     | Page 24                                     |
| 1  | O'Gara   | 1   | O'Gara                                      |
| .2 | coincident with SCO's report of its  | 2   | announcement; and three, he chortled?       |
| 3  | quarterly results?   | 3   | MS. FOLEY: Object to the form               |
| 4  | MS. FOLEY: I'm going to object   | 4   | of the question. The transcript will        |
| 5  | to that as asked and answered, and   | 5   | speak for Itself.                           |
| 6  | l'Il let you answer again.   | 6   | A I think there's a step missing            |
| 7  | A Yes.   | 7   | in there, sir -                             |
| 8  | Q And what words or substance of   | 8   | Q Please.                                   |
| 9  | the conversation do you precisely recall   | 9   | A - if I'm not mistaken.                    |
| 10 | him using In order for him to convey that  | 10  | Q You want me to read back what I           |
| 11 | as opposed to you to infer it?   | 11  | sald?                                       |
| 12 | MS. FOLEY: Object to the form  | 12  | A Why don't you.                            |
| 13 | of the question. Asked and answered.   | 13  | Q Let me see if I have accurately           |
| 14 | Q You can answer.  | 14  | captured the back and forth over the last   |
| 15 | A Istill answer?   | 15  | few minutes. I'm going to redo it a little  |
| 16 | Q Please.  | 16  | bit better now that I can see the way I did |
| 17 | A Maybe it was the laughter that I   | 17  | it. One, Mr. Stone                          |
| 18 | remember most about it.  | 18  | A You get to improve, is that               |
| 19 | Q All right. So tell me about  | 19  | fair?                                       |
| 20 | that.  | 20  | Q Yes, and you do too. Life is              |
|    | *******  | 21  | about improvement.                          |
| 21 | A Well, he basically – I just –  |     |   |
| 22 | maybe the right way to characterize it was   | 22  | One, Mr. Stone said to you we               |
| 23 | chortled.  | 23  | are releasing a statement about ownership   |
| 24 | Q And what do you recall of the  | 24  | of the UNIX copyrights; two, Mr. Stone drew |
| 25 | chortling?   | 25  | your attention to the fact that SCO was     |
|    | Page 23  |     | Page 25                                     |
| 1  | O'Gara   | l١  | O'Gara                                      |
| 2  | A That was at the end of our   | 2   | reporting its quarterly results the next    |
| 3  | conversation. It was shortly after we hung   | 3   | day; and three, Mr. Stone chortled.         |
| 4  | up. I think we had been on the phone for a   | 4   | A Okay. There is an absence of              |
| 5  | little bit of time going through all of  | 5   | causality in there.                         |
| .6 | this. He explained to me, and that's why   | 6   | Q You've put your finger on my              |
| 7  | It appears in this story, that the   | 7   | question.                                   |
| 8. | coincidence appears in this story because  | 8   | A All right. So there's the step            |
| 9  | he drew my attention to it.  | 9   | that's left out is that there was a         |
| 10 | Q And did - so I think we have   | 10  | connection between step A and step B.       |
| 11 | chortling at the end of the conversation?  | 111 | Q And my question is what did               |
| 12 | A Uh-huh, about that. It wasn't,   | 12  | Mr. Stone say that specifically identified  |
| 13 | you know, like it was about the fact   | 13  | that connection as opposed to you interring |
| 14 | that they were putting out their statement   | 14  | from the                                    |
| 15 | on that day. That was what the laughter  | 15  | A I'm sorry, I'm not inferring,             |
| 16 | was about.   | 16  | all right? I don't remember the exact       |
| 17 | Q So let me see if I've accurately   | 17  | words, but it wasn't an inference. It was   |
| 18 | captured the back and forth over the last  | 18  | a statement. I would only be putting words  |
| 19 | few minutes.   | 19  | In his mouth, I can't remember it, the      |
| 20 | A Okay.  | 20  | exact words, but the meaning was quite      |
| 21 | Q Mr. Stone said to you, one,  | 21  | clear.                                      |
| 22 | we're releasing this statement about   | 22  | Q Well, let me ask you this, if             |
| 23 | ownership of the UNIX copyrights; two, SCO   | 23  | you look at your                            |
| 24 | is posting, it is reporting its quarterly  | 24  | A Article?                                  |
|    | and the contraction of the contr |     |   |
| 25 | results on the same day as our   | 25  | Q Article, thank you, on May 28,            |

7 (Pages 22 to 25)

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|          | Mauree                                      | n O'C | Gara .   |
|----------|---|-------|--|
|          | Page 26                                     |       | Page 28  |
| 1        | O'Gara                                      | 1     | O'Gara   |
| 2        | 2003, Exhibit 1080.                         | 2     | for that statement from its public                                       |
| 3        | A Yes.                                      | 3     | relations people, as a lever to get that                                 |
| 4        | Q It looks to me that the way you           | 4     | statement I repeated what Stone had said                                 |
| 5        | reported it, to use the terminology you and | 5     | to me.   |
| В        | I have started to adopt here                | 6     | Q What exactly did you state when  |
| 7        | A Yes.                                      | 7     | you repeated what Stone had said to you?                                 |
| 8        | Q you reported one and two, but             | 8     | A Whatever his exact words were at                                       |
| 9.       | not causality?                              | 9     | the time. I'm sorry.   |
| 10       | A Bight.                                    | 10    | Q Were you reading from notes?   |
| 11       | Q Do you agree with that?                   | 11    | A I don't think you had to because                                       |
| 12       | A Yes.                                      | 12    | it was just a sentence.  |
| 13       | Q Why is that?                              | 13    | Q Your best recollection is you  |
| 14       | A I didn't know what to do with             | 14    | had no notes?  |
| 15       | it, quite frankly, and the story wasn't     | 15    | A No, I have notes, but you know,  |
| 16       | about - from my point of view the story     | 16    | they're not understandable, they're not                                  |
| 17       | wasn't about that.                          | 17    | notes like full sentences, they're not                                   |
| 18       | Q And why is that?                          | 18    |  |
| 19       | A Because I'm not a lawyer.                 | 19    | verbatim everything. If I took shorthand, you'd be handy to have around. |
| 20       | Q You saw no news value in a                | 20    | Q Do you have those shorthand  |
| 21       | statement to you by a Novell executive that | 21    | notes still?   |
| 22       | conveyed to you that the reason Novell was  | 22    | A No, I don't do shorthand.  |
| 23       | releasing its statement on a particular     | 23    |  |
| 24       | date was because SCO was reporting its      | 24    |  |
| 25       | quarterly results that same date?           | 25    | You're being more precise than I am.  A Yes, yes.                        |
|          | quartory records that carrie date:          |       | 7 103, yes.  |
|          | Page 27                                     |       | Page 29  |
| 1        | O'Gara                                      | 1     | O'Gara   |
| 2        | A i know that that seems in                 | 2     | Q Do you have the notes of the   |
| 3        | isolation like that should be really        | 3     | short phrases still?   |
| 4        | important, okay, but there were so many     | 4     | A No.  |
| 5        | issues in this very complicated matter that | 5     | Q What is your practice of the   |
| 6        | that would make a great sidebar or a        | 6     | short phrases, if you will, in terms of                                  |
| 7        | follow-up maybe, but we were talking about  | 7     | whether you keep them or not?  |
| 8        | something else in this story and i          | 8     | A I throw everything out.  |
| 9        | thought - I didn't know where it was all    | 9     | Q When do you do that?   |
| 10       | going to go, and I've known Chris a long    | 10    | A If not when the story is   |
| 11       | time. Sometimes I get protective.           | 11    | written, then every week, and I've been                                  |
| 12       | Q Did you subsequently convey to            | 12    | doing that since 1972.   |
| 13       | someone at SCO that you had heard from      | 13    | Q When you conferred with the  |
| 14       | Chris Stone that the reason Novell had      | 14    | public relations people at SCO, first of                                 |
| 15       | issued its statement that day was because   | 15    | all, were you conferring with Blake                                      |
| 16       | SCO was to time it with the earnings        | 16    | Stowell?   |
| 17       | announcement?                               | 17    | A Contening? I don't conter with   |
| 18       | A As far as I remember, and                 | 18    | the PR people. I called Blake Stowell,                                   |
| 19       | according to the evidence in front of me    | 19    | yes.   |
| 20       | here, we were breaking this news. Okay?     | 20    | Q What did you mean, why did you   |
| 21       | In the normal course of                     | 21    | object to the word confer?   |
| 22       | reporting, I went back to the other guy,    | 22    | A I find it difficult to use that  |
| 23       | being SCO, who as far as I know didn't know | 23    | verb, when I'm talking about a flak, no.                                 |
| 24<br>25 | anything about this, for a statement.       | 24    | You don't have conferences with PR people.                               |
| 23       | During the course of my asking              | 25    | Q You called him up, you told  |

8 (Pages 26 to 29)

|     |   | <u> </u> |   |
|-----|---|----------|---|
| 1   | Page 30                                     | ł        | Page 32                                     |
| 11  | O'Gara                                      | 1        | O'Gara                                      |
| 2   | him   | 2        | the part of Mr. Stowell to give me a        |
| 3   | A From the same phone I talked to           | 3        | reaction to that, I pushed further and used |
| 4   | Chris on.                                   | 4        | the expressions that Stone had said to me,  |
| 5   | Q You told him what Chris had said          | 5        | and the substance of which is that the      |
| 1   |   | ŧ.       |   |
| 6   | to you and you asked him whether he had any | 6        | reason that they were doing it tomorrow was |
| 7   | comment?                                    | 7        | because you're going to have your earnings  |
| 8   | A No. I told, I said to them what           | В        | call.                                       |
| 9   | I knew, which is the substance of this      | 9        | Q And you're confident as you sit           |
| 10  | story, that the next day that they were     | 10       | here today, It's 4 years later, that you    |
| 111 | going to issue this cease and desist        | 11       | didn't embellish on what Mr. Stone had said |
| 12  | letter, and in order to get a statement     | 12       | lo you?                                     |
| 13  | from SCO as a lever, I threw in what Chris  | 13       | A No.                                       |
| 14  | had said. It wasn't as scandalous to me as  | 14       | Q In order to elicit comment from           |
| 15  |   | 1        | Mr. Stowell?                                |
| 1   | a regular business reporter than it has     | 15       |   |
| 16  | become under these circumstances. Do you    | 16       | A No, absolutely not.                       |
| 17  | understand what I mean?                     | 17       | Q You're not confident, or you're           |
| 18  | Q I'm trying to figure out which            | 18       | confident you did not?                      |
| 19  | of the I think setting aside the            | 19       | A I am absolutely confident that I          |
| 20  | chorlling for a minute, we've talked about  | 20       | did not. That would be a lie.               |
| 21  | three components again, the fact of the     | 21       | Q Would you regard that as a                |
| 22  | date of the planned Issuance of the Novell  | 22       | breach of your ethics as a journalist?      |
| 23  | statement, the fact of the date of the SCO  | 23       | A Absolutely.                               |
| 24  | earnings release and the causal             | 24       | Q It's sort of like                         |
| 25  | relationship between one and two.           | 25       | cross-examining a witness when you don't    |
|     |   |          | Cross Charming & Wares William you come     |
|     | Page 31                                     |          | Page 33                                     |
| 1   | O'Gara                                      | 1        | O'Gara                                      |
| 2   | A Uh-huh.                                   | 2        | have a basis for the cross-examination?     |
| 3   | Q And I'm trying to figure out if           | 3        | A Yesh, you guys can do it, but i           |
| 4   | you told SCO one, one and two, or one two   | 4        | can't.                                      |
| 5   | and three.                                  | 5        | Q We can't either.                          |
| 6   | •   |          |   |
| 1 " | A if I remember my one, two and             | 6        | So with that in mind, how would             |
| 7   | three correctly, the answer is one, two and | 7        | you describe your relationship with         |
| В   | three.                                      | 8        | Mr. Stowell?                                |
| 9   | Q So then I'll say that in more             | 9        | A As normal.                                |
| 10  | colloquial terms, you conveyed to Blake     | 10       | Q What does normal mean to you?             |
| 11  | Stowell that Chris Stone had said to you    | 11       | A All press agents are wary of              |
| 12  | A Did I do something with your              | 12       | somebody like me. So it's like constantly,  |
| 13  | wire? Excuse me. Sorry. I moved.            | 13       | It's like cats, you know, or dogs sniffing  |
| 14  | Q You conveyed to Blake Stowell             | 14       | each other out constantly. You might know   |
| 15  | that Chris Stone had said to you that       | 15       | that dog, but you know, you're not          |
| 16  | Novell was Issuing its statement in order   | 16       | absolutely, you're never friends with       |
| 17  | to time its release with SCO's report of    | 17       | that - you know, you don't have friends,    |
| 18  | its earnings?                               | 18       | Journalists don't have friends, but you     |
| 19  | A Among the many things – the               | 19       |   |
|     | , ,   | ,        | have people that you deal with all the      |
| 20  | substance of the statement seemed to take   | 20       | time.                                       |
| 21  | priority under these, in my world the       | 21       | Q Did you have the impression that          |
| 22  | substance of the statement was the primary  | 22       | Mr. Stowell regarded you as an ally in the  |
| 23  | fact. I was trying to get a reaction to     | 23       | SCO   |
| 24  | that.                                       | 24       | A Never, no.                                |
| 25  | Then when I noticed hesitancy on            | 25       | Q Did you convey to Mr. Slowell at          |
| 1   |   | 1        |   |

9 (Pages 30 to 33)

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|     | Maureer                                     | a O'G | ara                                    |
|-----|---|-------|--|
|     | Page 34                                     |       | Page 36                                |
| 1   | O'Gara                                      | 1     | O'Gara                                 |
| 2   | any time that you took - let me start over  | 2     | 190.                                   |
| 3   | again.                                      | 3     | (Whereupon, Exhibit 190 was            |
| 4   | How did you view the SCO versus             | 4     | marked for Identification.)            |
| 5   | IBM SCO versus Novell dispute as it was     | 5     | MR. JACOBS: 190 is an e-mail           |
| 6   | brewing in the spring and summer of 2003?   | 6     | string with the date on the top of     |
| 7   | A As a good story.                          | 7     | July 20, 2004. So it's after the       |
| 8   | Q Did you believe that you were             | 8     | period you and I were talking about    |
| 9   | taking a particular side in that story?     | 9     | before. It's produced by SCO at        |
| 10  | A I have no side.                           | 10    | 1648756 to 759.                        |
| 11  | Q Did you understand that people            | 11    | A Yeah, So?                            |
| 12  | thought you were taking sides during that   | 12    | Q So this is a string of messages      |
| 13  | period?                                     | 13    | that you forwarded to SCO, correct?    |
| 14  | A I think that my stories stand             | 14    | A I don't, I don't know.               |
| 15  | for that. I think that - I would refer      | 15    | Q Well, do you see the e-mail at       |
| 16  | you to my stories. I don't see any bias in  | 16    | the bottom of 756 from O'Gara to Blake |
| 17- | any of my stories. It's just a completely   | 17    | Stowell?                               |
| 18  | objective recitation of the facts.          | 18    | A 1 see from Frank somebody or         |
| 19  | Q So my question, though, is do             | 19    | another to O'Gara.                     |
| 20  | you think that there were, didn't you in    | 20    | Q And look at the bottom of the        |
| 21  | fact and I promise you I won't ask you a    | 21    | first page.                            |
| 22  | question unless I have a basis for it       | 22    | A Then I see - the bottom of the       |
| 23  | didn't you, in fact, receive communications | 23    | first                                  |
| 24  | from people who thought you were taking     | 24    | Q The string is in reverse order.      |
| 25  | SCO's side in the dispute?                  | 25    | A Yeah, I see. I don't know what       |
|     | Page 35                                     |       | Page 37                                |
| 1   | O'Gara                                      | 1     | O'Gara                                 |
| 2   | A If I were to say that most                | 2     | the context is.                        |
| .3  | people can't read, would you understand     | 3     | MS. FOLEY: Just actually listen        |
| 4   | what I was talking about?                   | 4     | to the question that he asked.         |
| 5   | Q I'm not asking you to defend              | 5     | THE WITNESS: Sorry.                    |
| 6   | yourself at this point.                     | 6     | MS. FOLEY: The question again          |
| 7   | A I understand that.                        | 7     | was?                                   |
| 8   | Q I'm asking you whether, in fact,          | 8     | Q You forwarded an e-mail string       |

you received those communications. 10 When? What's the timing? 11 Well, let me - I was telling Mauricio, again, I have a rule against 12 13 asking trick questions unless I tell you 14 it's a trick question. So let me show you 15 what I'm referring to. MR. JACOBS: We have another 16 17 deposition going on today with 18 Mr. Levine, so what I propose to do is to skip to 90. 19 20 MR. GONZALEZ: Okay. 21 MR. JACOBS: And we'll mark this 22 MR. GONZALEZ: You mean 1090. 23 24 MR. JACOBS: No. 90. We have a 25 different numbering. Let's mark it

Q You forwarded an e-mail string that you received to Mr. Stowell at SCO, correct?

A No.

MS. FOLEY: The question is does the document reflect that.

A I guess so.

Q Well, you don't have a recollection?

A I don't remember it, you know, I get lots of e-mails. So what?

Q Well, I guess my question is so what, why did you forward this string of e-malls from Frank Jalics, J-A-L-I-C-S, in which he accused you of being on, in a nutshell, on SCO's side --

A Yeah.

Q -- why did you forward that to

10 (Pages 34 to 37)

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|  | Page 38  |  | Page 40  |
|--|--|--|--|
| 11   | O'Gara   | lı   | O'Gara   |
| 2  | SCO under an e-mail "I want war pay"?  | 2  | yes.   |
| 3  | MR. GONZALEZ: Objection.   | 3  | Q And it reads, "SCO needs AIX and   |
| 4  | A I don't remember the context of  | 4  | DYNEX because it is charging IBM with  |
| 5  | the thing, but   | 5  | copying AIX and DYNEX line for line Into   |
| 6  | MS. FOLEY: Do you remember why   | 6  | Linux It is not observing 1244 with a  |
| 7  |  | I  | Linux. It is not charging IBM with copying   |
| 1  | you forwarded it?  | 7  | UNIX line for line into Linux. It is   |
| 8  | THE WITNESS: No.   | 8  | charging IBM with copylng derivative copy  |
| 9  | Q Does it strike you as peculiar   | 9  | line for line into Linux.  |
| 10   | that a journalist would forward to one of  | 10   | Do you see that?   |
| 111  | the sides in a dispute a string of e-mails   | 11   | A Yes.   |
| 12   | she got from a reader?   | 12   | Q So you were trying to clarity  |
| 13   | A I don't know what the right  | 13   | for him what you understood the dispute was  |
| 14   | answer to that question is because I don't   | 14   | about?   |
| 15   | know the context.  | 15   | A Isn't that what the dispute was  |
| 16   | Q Well, what's the context here?   | 16   | about at that time?  |
| 17   | A I'm probably just complaining  | 17   |  |
| 18   | about getting this kind of crap all, you   | 1  | O I'm not challenging that.  |
| 19   |  | 18   | A Okny.  |
|  | know, all the time.  | 19   | O I'm just characterizing what you   |
| 20   | People who can't read and don't  | 20   | were doing.  |
| 21   | know what the heck is going on and got it  | 21   | A Right, okay.   |
| 22   | wrong to begin with just, you know, saying   | 22   | Q And then he goes on and again  |
| 23   | that, you know, you think you've got it  | 23   | sort of disputes your reporting on the case  |
| 24   | tough, Blake, you should see it from my  | 24   | In his July 20th e-mail, do you see that?  |
| 25   | side. That's no big deal.  | 25   | He says, "What makes you want to   |
|  |  |  |  |
| <b> </b>   |  | <del></del>  |  |
|  | Page 39  |  | Page 41  |
| 1  | O'Gara   | 1  | O'Gara   |
| 2  | O'Gara Q So Jalics says to you in the  | 2  | O'Gara<br>believe SCO when every time they show up to  |
| 3  | O'Gara Q So Jalics says to you in the July 19th e-mail   | 2<br>3   | O'Gara believe SCO when every time they show up to a different court or to the same court on a   |
| 2<br>3<br>4  | O'Gara Q So Jalics says to you in the July 19th e-mail A July 19, is that the beginning?   | 2  | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing?   |
| 3  | O'Gara Q So Jalles says to you in the July 19th e-mail A July 19, is that the beginning? Q It's towards the beginning, yes.  | 2<br>3   | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing?   |
| 2<br>3<br>4  | O'Gara Q So Jalics says to you in the July 19th e-mail — A July 19, is that the beginning? Q It's towards the beginning, yes. It's on the bottom half of 758.  | 2<br>3<br>4  | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case,  |
| 2<br>3<br>4<br>5   | O'Gara Q So Jalles says to you in the July 19th e-mail A July 19, is that the beginning? Q It's towards the beginning, yes.  | 2<br>3<br>4<br>5   | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case, did you know it was primarily a contract   |
| 2<br>3<br>4<br>5<br>6  | O'Gara Q So Jalics says to you in the July 19th e-mail — A July 19, is that the beginning? Q It's towards the beginning, yes. It's on the bottom helf of 758. A July 19th, walt a second. Yeah.  | 2<br>3<br>4<br>5<br>6  | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case, did you know it was primarily a contract dispute and not really about contract   |
| 2 3 4 5 6 7  | O'Gara Q So Jalics says to you in the July 19th e-mail — A July 19, is that the beginning? Q It's towards the beginning, yes. It's on the bottom helf of 758. A July 19th, walt a second. Yeah. About being Hillary to their Bill Clinton?   | 2<br>3<br>4<br>5<br>6<br>7   | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case, did you know it was primarily a contract dispute and not really about contract copyright infringement? When they filed   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8  | O'Gara Q So Jalics says to you in the July 19th e-mail — A July 19, is that the beginning? Q It's towards the beginning, yes. It's on the bottom helf of 758. A July 19th, walt a second. Yeah. About being Hillary to their Bill Clinton? Q Yes. To be precise, he says,  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case, did you know it was primarily a contract dispute and not really about contract copyright infringement? When they filed the suit against Auto Zone, did you realize   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | O'Gara Q So Jalics says to you in the July 19th e-mail — A July 19, is that the beginning? Q It's towards the beginning, yes. It's on the bottom hell of 758. A July 19th, walt a second. Yeah. About being Hillary to their Bill Clinton? Q Yes. To be precise, he says, "You take SCO's side like Hillary took Bill  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case, did you know it was primarily a contract dispute and not really about contract copyright intringement? When they filed the suit against Auto Zone, did you realize that it was really about them thinking that   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | O'Gara Q So Jalics says to you in the July 19th e-mail — A July 19, is that the beginning? Q It's towards the beginning, yes. It's on the bottom helf of 758. A July 19th, walt a second. Yeah. About being Hillary to their Bill Clinton? Q Yes. To be precise, he says, "You take SCO's side like Hillary took Bill Clinton's side when he was being accused of  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | O'Gara believe SCO when every time they show up to a different court or to the same court on a different day their story keeps changing? When they filed the suits in the IBM case, did you know it was primarily a contract dispute and not really about contract copyright infringement? When they filed the suit against Auto Zone, did you realize that it was really about them thinking that Auto Zone might have ported some static   |
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11 (Pages 38 to 41)

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| 4 A Is this backwards too? 4 Q Was Mr. Slowell doing his job in  |
| 4 A Is this backwards too? 4 Q Was Mr. Stowell doing his job in  |
|  |
| 5 Q This is backwards too. So 191 5 trying to get good PR for SCO through you  |
| 6 is a short string in which your Client 6 A No.   |
| 7 Server News is forwarded internally at SCO. 7 MR. GONZALEZ: Objection. Calls   |
| 8 And so if you go down to the bottom of SCO 8 for speculation.  |
| 9 1278156, there is your May 2, 2003 Client 9 Q No, he wasn't doing that?  |
| 10 Server News. 10 A No. Blake did not do a good   |
| 11 Do you see that? 11 job.  |
| 12 A I don't know what story they're 12 Q So you put that story on the   |
| 13 referring to. Wait a minute. Yeah. 13 front page, but it didn't have anything to  |
| 14 Q So If you look at the e-mail 14 do with Blake Stowell doing his job?  |
| 15 highlights of what looks to be Adobe 15 A Absolutely not.   |
| 16 Acrobat attachment, your e-mail highlight 16 Q Why dld you give it front page   |
|  |
| 17 says, "Against the backdrop of a thin IBM 17 placement?   |
| 18 response to SCO's billion dollar suit 18 A Probably because it was the most   |
| 18 response to SCO's biflion dollar suit 19 against it, SCO claims it's found line for 19 interesting thing that happened that week  |
| 18 response to SCO's biflion dollar suit 19 against it, SCO claims it's found line for 20 line plaglarism of SVR5 and Linux and has 20 A Probably because it was the most 19 interesting thing that happened that week 20 Q In your judgment?  |
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| 18 response to SCO's biflion dollar suit 19 against it, SCO claims it's found line for 20 line plaglarism of SVR5 and Linux and has 21 renewed its threat to pull IBM's license in 22 six weeks."  18 A Probably because it was the most 19 interesting thing that happened that week 20 Q in your judgment? 21 A i get to do that, yeah. 22 So by the way, this 191, we'll  |
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12 (Pages 42 to 45)

|                | Maureen   |    | · ·  |
|----------------|---|----|--|
|                | Page 46   |    | Page 40  |
| 1              | O'Gara  | 1  | O'Gara   |
| 2              | part of the deposition. This one I'm going              | 2  | we're all supposed to admire so much.              |
| 3              | to show you about is back to October 2004.              | 3  | Q And that's what you meant by                     |
| 4              | So this will be 192. Do you have it?                    | 4  | politics?  |
| 5              | A No, i don't.  | 5  | A len't that what that is?                         |
| 6              | (Whereupon, Exhibit 192 was                             | 6  | Q I don't know. I'm asking you.                    |
| 7              | marked for Identification.)                             | 7  | What did you mean by politics?                     |
| 8              | MR. JACOBS: Why don't you hold                          | 8  | A That's what I would say.                         |
| 9              | 192 and we'll mark another one as 193.                  | 9  | Q Family values?                                   |
| 10             | (Whereupon, Exhibit 193 was                             | 10 | A Yeah.  |
| 11             | marked for Identification.)                             | 11 | Q And what do you mean by it                       |
| 12             | Q So 193 is an e-mail string that                       | 12 | should be rewarded?                                |
| 13             | ends on August 11, 2003 produced by SCO                 | 13 | A A lot of people are - oh, come                   |
| 14             | under 143593 to 595.                                    | 14 | on, you know, it's meaningless. There's            |
| 15             | A Yeah.   | 15 | nothing there. It's just chatter.                  |
| 16             | Q And 192 is an e-mail string                           | 16 | Q And then he reports back, "Aaw,                  |
| 17             | ending October 22, 2004 ending under SCO                | 17 | shucks, I'm blushing now."                         |
| 18             | 1648173 to 176. Let me ask you about 193                | 18 | Do you see that?                                   |
| 19             | first.  | 19 | A I guess that's because I said he                 |
| 20             | MS. FOLEY: Have you had a                               | 20 | was cute. I call most people lamb chop.            |
|                | chance to look at it, 193?                              | 21 | Most guys think they're the only ones I say        |
| 21             |   | 22 |  |
| 22             | A I'm sorry, I'm looking here –                         |    | it to. I've got 2000 senior executives in          |
| 23             | oh, I'm sorry, I'll looking at 192.                     | 23 | the computer industry who think they're the        |
| 24             | Q That's all right. Take a look                         | 24 | only ones I call lamb chop. Come on, honey.        |
| 25             | at 193 now.   | 25 | noney.   |
|                | Page 47   |    | Page 4   |
| 1              | O'Gara  | 1  | O'Gara   |
| 2              | A ' Yes.  | 2  | O I'm feeling left out.                            |
| 3              | Q So 193 is an e-mail string                            | 3  | A Let's deal with this. You know,                  |
| 4              | between you and Stowell about a couple of               | 4  | I mean, it's a dog eat dog world out there.        |
| 5              | issues, but what I want to focus attention              | 5  | Q Yeah, and I think I saw all of                   |
| 6              | on is the most recent two e-mails in the                | 6  | that except the focus on politics. That            |
| 7              | string. It seems to me you're joking with               | 7  | seemed like an odd word in this context.           |
| 8              | him about the subscription costs to Linux               | 8  | A I don't know. We were talking                    |
| 9              | Graham and you say I'll make you a special              | 9  | about other kinds of things. You know, you         |
| 10             | price.  | 10 | have to talk about other subjects with             |
| 11             | Do you see that?  | 11 | people and he was probably telling me about        |
| 12             | A Uh-huh.   | 12 | his kids and, you know, local school               |
| 13             | Q And that's on August 11, 2003,                        | 13 | election or whatever. It's                         |
| 14             | do you see that?  | 14 | Q So this was just chatter?                        |
| 15             | A Uh-huh.   | 15 | A This is just chatter. This is                    |
| 16             | Q And then you again, I think in                        | 16 | southern bell kind of chit cat, you know,          |
| 17             | humor I'll accept it as in humor you                    | 17 | just keep talking and maybe you'll get what        |
| 18             | say "you're so cute" and then you say "and              | 18 | you want, whatever it is.                          |
| 19             | your politics are sensible and should be                | 19 | Q So then on 192, Dean Zimmerman                   |
| 13             | rewarded." I didn't see the humor in that.              | 20 | at SCO writes to Blake Stowell and writes,         |
| 20             |   | 1  | Phon Linearson and concentration the next Manuscon |
|                | I was wondering what you meant by it.                   | 21 | "Am I impressed you actually got Maureen           |
| 20             |   | 21 | O'Gara to say something that was, well,            |
| 20<br>21       | I was wondering what you meant by it.                   | 1  | • • • •  |
| 20<br>21<br>22 | I was wondering what you meant by it.  A He's a mormon. | 22 | O'Gara to say something that was, well,            |

13 (Pages 46 to 49)

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|   | D 50   |   | Page 52  |
|---|--|---|--|
| t   | Page 50 O'Gara   | 1   | O'Gara   |
| 2   | Q And Stowell says, "I just killed   | 2   | or around March 21, 2003   |
| 3   | her with kindness and charm."  | 3   | A Wait a second.   |
| 4   | A Yes, and I just imagine that's   | 4   | MS. FOLEY: Why don't you take a  |
|   | chitchat too.  | 5   | moment to read Exhibit 195.  |
| 5   | ,  | 6   | A Why don't I read 194 first.  |
| 6   | Q That's your interpretation?  | 7   | MS. FOLEY: Okay.   |
| 7.  | A Yeah.  | 8   | MR. GONZALEZ: Just to clarify,   |
| 8   | MR. JACOBS: We've been going   | 9   |  |
| 9   | about an hour and 15. I'd like to  | _   | t want to object to the form of the  |
| 10  | give you a break and take a quick  | 10  | last question of Mr. Jacobs as well as his characterization of Exhibit 194.  |
| 11  | break. I think we can finish up by   | 11  | The state of the s |
| 12  | 1:00 if we take no more than a 5 or 10   | 12  | A Does the last paragraph of -   |
| 13  | minute break.  | 13  | MS. FOLEY: Actually, have you  |
| 14  | MR. GONZALEZ: You mean in total  | 14  | finished reading?  |
| 15  | or just your part?   | 15  | THE WITNESS: Yes.  |
| 16  | (Discussion held off the   | 16  | MS. FOLEY: Then you'll answer  |
| 17  | record.)   | 17  | questions, but I'm going to state for  |
| 18  | THE VIDEOGRAPHER: We are going   | 18  | the record beforehand that this now  |
| 19  | off the record. The time is 12:20.   | 19  | seems to be getting beyond the   |
| 20  | (Recess taken 12:20 p.m.)  | 20  | articles that were given to us before  |
| 21  | THE VIDEOGRAPHER: We are now   | 21  | the deposition to consider for   |
| 22  | back on the record. The time is  | 22  | privilege grounds.   |
| .23   | 12:38.   | 23  | I don't know exactly where you   |
| 24  | BY MR. JACOBS:   | 24  | intend to go or what questions you   |
| 25  | Q Ms. O'Gara, I'd like to show you   | 25  | intend to ask, and it may or may not   |
|   | Page 51  |   | Page 53  |
| 1   | O'Gara   | 1   | O'Gara   |
| 2   | what we'll mark as 194 and 195.  | 2   | raise privilege issues.  |
| 3   | (Whereupon, Exhibits 194 and 195   | 3   | So I'm going to let you ask the  |
| 1 .   | were marked for Identification.)   | 4   |  |
| 4   |  |   | questions and then maybe either we'll  |
| 5   | Q 194 is a copy of an article from   | 5   | have a conversation either on or off   |
| 1   |  |   |  |
| 5   | Q 194 is a copy of an article from<br>Linux Graham, SCO's lawyer speaks, says  | 5   | have a conversation either on or off<br>the record if it does start to raise   |
| 5<br>6  | Q 194 is a copy of an article from   | 5<br>6  | have a conversation either on or off   |
| 5<br>6<br>7   | Q 194 is a copy of an article from<br>Linux Graham, SCO's lawyer speaks, says<br>nothing. Do you see that?   | 5<br>6<br>7   | have a conversation either on or off the record if it does start to raise privilege issues. Q Actually on that point, you had communications directly or through your  |
| 5<br>6<br>7<br>8  | Q 194 is a copy of an article from<br>Linux Graham, SCO's lawyer speaks, says<br>nothing. Do you see that?<br>A Yep.   | 5<br>6<br>7<br>8<br>9<br>10   | have a conversation either on or off the record if it does start to raise privilege issues. Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the  |
| 5<br>6<br>7<br>8<br>9   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote?   | 5<br>6<br>7<br>8<br>9   | have a conversation either on or off the record if it does start to raise privilege issues. Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  |
| 5<br>6<br>7<br>8<br>9   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes.  | 5<br>6<br>7<br>8<br>9<br>10<br>11   | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question?  |
| 5<br>6<br>7<br>8<br>9<br>10   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that? A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark  | 5<br>6<br>7<br>8<br>9<br>10   | have a conversation either on or off the record if it does start to raise privilege issues. Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that? A Yep. Q Is that an article you wrote? A Yes. Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November  | 5<br>6<br>7<br>8<br>9<br>10<br>11   | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question?  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that? A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question? (Record read)  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that? A Yep. Q Is that an article you wrote? A Yes. Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14   | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question? (Record read) A. Yes.  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that? A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15   | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question? (Record read)  A. Yes. Q. You met with counsel for SCO?  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes. Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that white SCO's — you said that he  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16   | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question? (Record read)  A. Yes. Q. You met with counsel for SCO? A. No.   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes. Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17                                     | have a conversation either on or off the record if it does start to raise privilege issues.  Q. Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A. Could you repeat that question? (Record read)  A. Yes.  Q. You met with counsel for SCO?  A. No.  Q. You didn't meet in the lobby of this hotel with counsel for SCO?  A. Oh, I beg your pardon. I   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18                                     | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes. Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance and that it isn't proposing to go on a   | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20                   | have a conversation either on or off the record if it does start to raise privilege issues.  Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A Could you repeat that question? (Record read)  A Yes.  Q You met with counsel for SCO? A No. Q You didn't meet in the lobby of this hotel with counsel for SCO? A Oh, I beg your pardon. I thought you meant before today, I guess   |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21                   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance and that it Isn't proposing to go on a fishing discovery expedition, SCO doesn't want IBM to know what they are. Do you see that?  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21             | have a conversation either on or off the record if it does start to raise privilege issues.  Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A Could you repeat that question? (Record read)  A Yes.  Q You met with counsel for SCO? A No. Q You didn't meet in the lobby of this hotel with counsel for SCO? A Oh, I beg your pardon. I thought you meant before today, I guess the answer would be yes.  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22             | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance and that it Isn't proposing to go on a fishing discovery expedition, SCO doesn't want IBM to know what they are. Do you see that? A Yes, I do.   | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | have a conversation either on or off the record if it does start to raise privilege issues.  Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A Could you repeat that question? (Record read)  A Yes.  Q You met with counsel for SCO? A No. Q You didn't meet in the lobby of this hotel with counsel for SCO? A Oh, I beg your pardon. I thought you meant before today, I guess the answer would be yes.  Q Did you discuss the substance of  |
| 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance and that it Isn't proposing to go on a fishing discovery expedition, SCO doesn't want IBM to know what they are. Do you see that? A Yes, I do. MR. GONZALEZ: Objection.                                  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | have a conversation either on or off the record if it does start to raise privilege issues.  Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A Could you repeat that question? (Record read)  A Yes.  Q You met with counsel for SCO? A No. Q You didn't meet in the lobby of this hotel with counsel for SCO? A Oh, I beg your pardon. I thought you meant before today, I guess the answer would be yes.  Q Did you discuss the substance of your testimony today?  |
| 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24 | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes. Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance and that it isn't proposing to go on a fishing discovery expedition, SCO doesn't want IBM to know what they are. Do you see that? A Yes, I do. MR. GONZALEZ: Objection. Q And then Mr. Heise submits his | 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24  | have a conversation either on or off the record if it does start to raise privilege issues.  Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A Could you repeat that question? (Record read)  A Yes.  Q You met with counsel for SCO? A No.  Q You didn't meet in the lobby of this hotel with counsel for SCO? A Oh, I beg your pardon. I thought you meant before today, I guess the answer would be yes.  Q Did you discuss the substance of your testimony today?  A We discussed the First Amendment   |
| 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23   | Q 194 is a copy of an article from Linux Graham, SCO's lawyer speaks, says nothing. Do you see that?  A Yep. Q Is that an article you wrote? A Yes, Q And 195 is a declaration of Mark Heise in the SCO v. IBM case dated November 7, 2006. In 194 you said that you had a conversation with Mr. Heise and that he said that while SCO's — you said that he said that while SCO's claims have substance and that it Isn't proposing to go on a fishing discovery expedition, SCO doesn't want IBM to know what they are. Do you see that? A Yes, I do. MR. GONZALEZ: Objection.                                  | 5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | have a conversation either on or off the record if it does start to raise privilege issues.  Q Actually on that point, you had communications directly or through your counsel with counsel for SCO before the deposition?  A Could you repeat that question? (Record read)  A Yes.  Q You met with counsel for SCO? A No. Q You didn't meet in the lobby of this hotel with counsel for SCO? A Oh, I beg your pardon. I thought you meant before today, I guess the answer would be yes.  Q Did you discuss the substance of your testimony today?  |

14 (Pages 50 to 53)

|          | Manisen  | <b>~ ~</b> . |   |
|----------|--|--------------|---|
| <u> </u> | Page 54  |              | Page 56                                     |
| 1        | O'Gera   | 1.           | O'Gara                                      |
| 2        | would ask me.  | 2            | shell with him?                             |
| 3        | Q Did you discuss the answers you  | 3.           | A No.                                       |
| 4        | would give?  | 4            | Q And Mr. Stone didn't use the              |
| 5        | A I wouldn't characterize it that  | 5            | word bomb shell with you?                   |
| ž        | · ·  | 6            | A No.                                       |
| 6        | Q What did you convey from your  | 7            | Q Bomb shell is your                        |
| 7        | side?  | 8            | characterization today?                     |
| 8        | A What did I convey, you mean what   | 9            | A Right. But that's what it was             |
| 9        | did I say?   | 10           | intended to be.                             |
| 10       | Q Uh-huh.  | 11.          | Q That's the way you understood             |
| 11       | A That it was my understanding   | 12           | it?   |
| 12       | that we were going to talk about this story  | 13           | A No, that is the way the world             |
| 13       | that I wrote on May 28th, 2003 and that my   | 14           | was supposed to understand it, because it   |
| 14       | conversation with Mr. Stone was reflected  | 15           | is a bomb shell, sir.                       |
| 15       |  | 16           | Q In your judgment?                         |
| 16       | in paragraph 3.  | 17           | A No. It's a fact. It's not a               |
| 17       | Q Did you discuss with him the   | 18           | judgment. It's a fact.                      |
| 18       | question of whether Mr. Stone conveyed   | 19           | Q Has anyone else validated that            |
| 19       | anything more to you than was carried, that  | 20           | fact other than yourself?                   |
| 20       | was contained in paragraph 3 of Exhibit  | 21           | A We wouldn't all be here if it             |
| 21       | 1080?  | 22           | wasn't.                                     |
| 22       | THE WITNESS: Could you repeal  | 23           | Q If you look at 194 and 195                |
| 23       | that, please?  | 24           | A Yes.                                      |
| 24       | (Record read)  | 25           | Q Mr. Heise is a lawyer for SCO             |
| 25       | A We discussed the meaning of  | 25           | G Mil. Fraiso is a lawyer for 5 5           |
| -        | Page 55  |              | Page 57                                     |
| 1        | O'Gara   | 1            | O'Gara                                      |
|          | paragraph 3.   | 2            | and he's critiquing this erticle, in 195 in |
| 2 3      | Q What did you tell him the  | 3            | his declaration he's contradicting 194,     |
| 4        | meaning was?   | 4            | isn't he?                                   |
| 5        | A Exactly what I've testified to   | 5            | MS. FOLEY: Well, are you                    |
| 6        | here today.  | 6            | representing that to her?                   |
| 7        | Q How did you you and I kind of  | 7            | MR. JACOBS: I'm asking her.                 |
| 8        | teased it out with a high degree of  | 8            | MS. FOLEY: Well, there's                    |
| 9        | specificity. What did you tell SCO's   | 9            | nothing in here that connects this to       |
| 10       | counsel about what you meant by that   | 10           | this. This refers in this affidavit         |
| 111      | paragraph?   | 11           | to Exhibit No. 374, I believe, and          |
| 12       | A lassumed we teased it out with   | 12           | there is no, nothing that shows that        |
| 13       | the same degree of specificity, if I   | 13           | this article that you've given as 94        |
| 14       | understand what those words mean.  | 14           | is the same thing he's talking about.       |
| 1        | My understanding is – let me   | 15           | MR. JACOBS: Why don't you look              |
| 115      | · · · · ·  | 16           | at paragraph 4, just so you and I are       |
| 16       |  | 17           | clear, of his declaration.                  |
| 17       | A . A SE BEST B L L L L L L L  | 18           | MS. FOLEY: And in paragraph 4               |
| 18       |  |              | it say SCO lawyers speak, says              |
|          |  | 20           |   |
| 20       |  | 21           | MR. JACOBS: Right.                          |
| 21       |  | 22           | MS. FOLEY: So you're                        |
| 22       |  | 23           | representing to her that this is the        |
| 23       | and the second s | 24           |   |
| 25       | and the second s | 25           |   |
| 123      | /  |              |   |
| L        |  |              | 15 (Pages 54 to 57                          |

15 (Pages 54 to 57)

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|    | Page 58                                     |    | Page 60                                    |
|----|---|----|--|
| 1  | O'Gara                                      | 1  | O'Gara                                     |
| 2  | Q Except paragraph 9, which is a            | 2  | MR. JACOBS: Are you going to               |
| 3  | different topic as you started to note.     | 3  | Instruct her?                              |
| 4  | A Yeah, that's correct.                     | 4  | MS_FOLEY: Yeah, I'm                        |
| 5  | Q So we'll set paragraph 9 aside.           | 5  | instructing her not to answer.             |
| 6  | I'm not going to ask you any questions      | 6  | MR. JACOBS: You want to get a              |
| 7  | about that.                                 | 7  | protective order and we'll come back?      |
| 8  | So you see in paragraph 3 he                | 8  | MS_FOLEY: You don't have a                 |
| 9  | says, Mr. Heise says, "I spoke to Maureen   | 9  | subpoena and I think it's beyond the       |
| 10 | O'Gara on or around March 21, 2003, shortly | 10 | scope. If you want to tell me why you      |
| 11 | after the complaint was filed in the        | 11 | think this is an appropriate question,     |
| 12 | instant action. The article is not an       | 12 | we can consider It, but                    |
| 13 | accurate reflection of the conversation."   | 13 | MR. JACOBS: It goes to                     |
| 14 | Do you see that?                            | 14 | accuracy.                                  |
| 15 | A Ido.                                      | 15 | MS. FOLEY: But you have what               |
| 18 | Q He says, in paragraph 4, "I               | 16 | do you need? You have the statement,       |
| 17 | explained to Ms. O'Gara that I was not      | 17 | you have the swom statement in front       |
| 18 | willing to detail the body of SCO's claims  | 18 | of you. You want to ask her does she       |
| 19 | in evidence in a telephone conversation     | 19 | believe her article is accurate, ask       |
| 20 | with a journalist, which is consistent with | 20 | her if she will stand by her article.      |
| 21 | the lact that Ms. O'Gara entitled her       | 21 | Q That's a good question. I think          |
| 22 | article SCO's Lawyer Speak, Says Nothing."  | 22 | it's pretty similar to what I said. Do you |
| 23 | Do you see that?                            | 23 | believe your article is accurate?          |
| 24 | MR. GONZALEZ: I object to the               | 24 | A And my answer was going to be,           |
| 25 | scope of the question.                      | 25 | before you got into this discussion, I     |
|    |   |    |  |
|    | Page 59                                     |    | Page 61                                    |
| 1  | O'Gara                                      | 1  | O'Gara                                     |
| 2  | Q And then he says, "I never                | 2  | stand by my article.                       |
| 3  | stated or implied in any way that I did not | 3  | Q So you believe that Mr. Heise            |

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stated or implied in any way that I did not want IBM to know what SCO's claims were." 5 Do you see that? 6 And you see in your article 7 where you wrote, "But doesn't want IBM to 8 know what they are"? 9 10 Yes. A Who is right here, you or 12 Mr. Heise? 13 MS. FOLEY: All right. Now I 14 think that we're going to object to 15 the form of the question right now. 16 If you want to ask her what she meant in the article and what she 17 believes and what she was reporting, 18 19

meant in the article and what she believes and what she was reporting, that's fine, but to ask about what the source's opinion is or the correctness of the source's opinion goes beyond both the scope and I don't believe that you've got, I don't think that we've received a counter-subpoena from you, have we?

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Q So you believe that Mr. Heise did, in fact, say to you that SCO does not want IBM to know what the substance of SCO's claims are?

MS. FOLEY: Are you quoting -sorry, I need to catch up here.

Q I'm referring to 194.

MS. FOLEY: Which line are we at? Are you reporting accurately what Mr. Helse said to you?

THE WITNESS: I am reporting accurately what Mr. Heise said to me.

Q And in paragraph 5, he says, "I stated to Ms. O'Gara that I had received numerous press inquiries regarding the lawsuit and that I personally had not yet spoken to IBM regarding the claims."

And then in 6, "I stated to Ms. O'Gara that IBM's response might be to tile a motion to dismiss rather than answering the claims, but I did not believe a motion to dismiss would prevail."

And then In 7, "I explained to

16 (Pages 58 to 61)

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| 1 O'Gara 2 Ms. O'Cara thet Sun Micro Systems had 3 purchased a different type of license that 4 IBM had and that SCO had concluded that Sun 5 Micro Systems was not in breach of that 6 Icense. I did not say that SCO was giving 7 Sun Micro Systems had half pass on IP 8 tampering. I never stated, I never said 8 that I had not read the other licensing 9 that I had not read the other licensing 10 UNIX agreements. 11 Do you see that in this 12 declaration? 13 A I saw it. 14 Q And then in your article you 15 went on to write, "At the time, and this 16 was a week ago, he had spent more time 18 been no contact. He figures IBM's strategy 18 will be to go for a dismissal on the 29 grounds that what he's charged IBM with so 20 grounds that what he's charged IBM with so 21 far are, is not a cause of action and are 22 conclusions, not facts. He seems 23 relatively unperturbed at the prospect. He 24 also gave Sun a half pass on IP tampering 25 calling it clean as a whistle' because it  10 Gara  11 Do you see that? 12 A Yes. 13 Q And do you stand by your story? 14 A Yes. 15 Q And do you stand by your story? 16 A Yes. 17 Q You were accurately reporting in 10 your story what Mr. Heise said to you? 18 A Yes. 19 Q And to the extent that his declaration of Ischairs what you reported in 10 your story, his declaration is Incorrect? 18 Ms. FOLEY: Object to the form of the question. I'm going to direct the wilness not to answer that question. 20 Q Are you going to follow your 21 Counset's instruction? 21 A That's why she's here.  |     | Машее                                      | n O'C | jara   |
|--|-----|--|-------|--|
| 2 Ms. O'Cara that Sun Micro Systems had 3 purchased a different type of license that 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had not read the other heach of that I had not read the other licensing 1 that I had not read the other licensing 1 IBM had and prevent and that I had not read the other licensing 1 IBM had and prevent and that I had not read the other licensing 1 IBM had and prevent and that I had not read the other licensing 1 IBM had and that SCO had concluded that Sun 1 IBM had and that SCO had concluded that Sun 1 IBM had had and that SCO had concluded that Sun 1 IBM had had and that SCO had concluded that Sun 1 IBM had had not read that I had not read the other licensing 1 IBM had and that SCO had concluded that Sun 1 IBM had had and that SCO had concluded that Sun 1 IBM had had and that SCO had concluded that In Ibm 1 IBM had had not read that I had not read the other licensing 1 IBM had and flag of the Growth Amade and that I shad not read and that I shad not rea |     |  |       | Page 6   |
| Jurchased a different type of ficense that IBM had and that SCO had concluded that Sun Micro Systems was not in breach of that license. I did not say that SCO was giving Sun Micro Systems half pass on IP tampering. I never stated, I never said that I had not read the other licensing that I had not read th | 1   |  | 1     | O'Gara   |
| BM had and that SCO had concluded that Sun   Micro Systems wan not in breach of that   Eichense. I did not say that SCO was giving   Sun Micro Systems a hall pass on IP   The tampering I never stated, I never said   Sun Micro Systems had he other licensing   Sun Micro Systems had he other licensing   Sun Micro Systems had he other licensing   Sun Micro Systems had pass on IP   Sun Micro Systems had possibly a copy of this one.   MR. JACOBS: I seem to be shy a copy of this one.   MR. JACOBS: Yes.   OR So this is an e-mail to you dated May 30, 2005, Exhibit 196, produced under SCO 1647696 to 697.   Do you see that!   Na Jacobs Systems wan and this was a week ago, he had spent more time to went on to write, "At the time, and this was a week ago, he had spent more time to go or a dismissal on the growth of a been no contact. He figures IBM's strategy will be to go for a dismissal on the growth of a rare, is not a cause of action and are relatively unperturbed at the prospect. He also gave Sun a hall pass on IP tampering calling it clean as a whistle' because It   Do you see that?   A Ves.   Do you see that?   Do you see that?   A Ves.   Do you see that?   A Ves.   Do you see that?   Do you see   | 2   | Ms. O'Gara that Sun Micro Systems had      | 2     | marked for Identification.)  |
| Bill Mad and that SCO had concluded that Sun   Micro Systems wan not in breach of that   Eichense. I did not say that SCO was giving   Sun Micro Systems a half pass on IP   The tampering I never stated, I never said   Sun Micro Systems half pass on IP   The tampering I never stated, I never said   Sun Micro Systems half pass on IP   The tampering I never stated, I never said   Sun Micro Systems half pass on IP   The tampering I never stated, I never said   Sun Micro Systems half pass on IP   The tampering I never stated, I never said   Sun Micro Systems half pass on IP   Sun Micro Systems half pas   | 3   | purchased a different type of ficense that | 3     | A Why does the print keep aetting  |
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| 6 Ilcense. I did not say that SCO was giving 7 Sun Micro Systems a hall pass on IP 8 tampering. I never stated, I never said 9 that I had not read the office licensing 1 UNIX agreements. 11 Do you see that in this 12 declaration? 13 A I saw it. 14 Q And then in your article you 15 went on to write, "At the time, and this 16 was a week ago, he had spent more time 16 taking to us than to IBM that there had 16 been no contact. He figures IBM's strategy 19 will be to go for a dismissal on the 20 grounds that what he's charged IBM with so 21 far are, is not a cause of action and are 22 conclusions, not facts. He seems 22 conclusions, not facts. He seems 23 relatively unperturbed at the prospect. He 24 also gave Sun a hall pass on IP tampering 25 calling it clean as a whistle' because it 26 Do you see that? 27 A Yes. 28 Q And tho you stand by your story? 29 A I stand by my story. 20 Q You were accurately reporting in 21 your story what Mr. Heise said to you? 22 A Yes. 23 Q And to the extent that his 24 declaration disclairns what you reported in 25 for its question. 26 Q Are you going to follow your 27 CQ Are you going to follow your 28 A That's why she's here. 29 Q And in comparison you felt you 29 were balanced. 20 G And in comparison you felt you 20 were doing? 21 A I saw a your could compare it 21 to my reporting? 22 A That's why she's here. 23 Q And the subject is an e-mail to you 26 Jo So this is an e-mail to you 27 dar will be to go for a dismissal to his 28 A I don't see a date on it. 29 Chot the ten to po 29 Opu see that? 30 Or Gara 31 Tambis why she's here. 31 Q Gara 32 Do you see that? 34 I don't see a date on it. 34 I don't see a date on it. 35 Op ou see that? 36 Or Gara 37 Or Hab's way. 38 Or Jo Hab's way. 39 Op ou see that? 30 O'Gara 31 Day ou see that? 31 O'Gara 32 O'Gara 33 O'Gara 4 It is a website that follows the 34 Un-huh. 4 Q Did you have a view in March of 5 SCO Illigation? 5 Q What way your view? 5 A Yes. 6 Q And to be extent that his 6 declaration disclaims what you reported in 7 Oy ou see that | 5   | Micro Systems was not in breach of that    | 5     |  |
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| been no contact. He figures IBM's strategy will be to go for a dismissal on the grounds that what he's charged IBM with so a far are, is not a cause of action and are conclusions, not facts. He seems relatively unperturbed at the prospect. He also gave Sun a hall pass on IP tampering calling it clean as a whistle' because it  Page 63  O'Gara paid all that money once upon a time for UNIX. As for everybody else, well he hadrit gotten around to reading their agreements yet."  Do you see that?  A Yes.  Q And do you stand by your story? A I stand by my story. Q You were accurately reporting in your story, his declaration is incorrect? MS. FOLEY: Object to the form of the question. A That's why she's here. Q Now let's look at what we'il mark as 196.  It to send a jab PJ's way."  A Okay. Q Do you see that?  A Uh-huh. Q Who is PJ? A PJ is the purported author of the Groklaw site.  Q What is the Groklaw site.  O'Gara  Page 63  O'Gara  Page 63  A It is a website that follows the SCO case — I should say cases maybe but. Q Did you have a view in March of 2005 about whether PJ or the Groklaw site was a reliable source of information on the SCO litigation?  A Yes. Q And to the extent that his declaration disclaims what you reported in your story, his declaration is incorrect? MS. FOLEY: Object to the form of the question. I'm going to direct the witness not to answer that question. Q Are you going to follow your counsel's instruction? A That's why she's here. Q Now let's look at what we'll mark as 196.  | 17  | talking to us than to IBM that there had   | 17    |  |
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17 (Pages 62 to 65)

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|--|--|--|---|
| 4  | Page 66<br>O'Gara  | •  | Page 6  |
| 1  |  | 1  | O'Gara  |
| 2  | A She's not reporting. That's not  | 2  | Groklaw about the SCO v. IBM suit."   |
| 3  | reporting. Reporting has to do with facts.   | 3  | Do you see that?  |
| 4  | She is writing a piece. It's an editorial  | 4  | A Uh-huh.   |
| 5  | or editorializing.   | 5  | Q What is a herodin?  |
| 6  | Q And that was the view you held   | 6  | A I suppose we could look it up in  |
| 7  | in March 2005?   | 7  | the dictionary.   |
| 8  | A Yes.   | 8  | Q Why did you use the word?   |
| 9  | Q' And then you did, in fact, write  | 9  | A Because it's accurate.  |
| 10   | a story about PJ or Pamela Jones, didn't   | 10   | Q And in what way is it accurate?   |
| 11   | you?   | 11   | A Have you read Groklaw?  |
| 12   | A Yes.   | 12   | Q I'm sorry, I get to ask the   |
| 13   | MR. JACOBS: Let's take a look  | 13   | questions.  |
| 14   | at that. We'll mark this as 197.   | 14   | A If you read Groklaw, you would  |
| 15   | (Whereupon, Exhibit 197 was  | 15   | boow that haraclin in the sinks would. There  |
| 16   | marked for Identification.)  | 1  | know that herodin is the right word. There  |
| 17   |  | 16   | is a difference between a good word and a   |
|  | Q So In 196, Stowell says in the   | 17   | right word.   |
| 18   | subject line, "I need you to send a jab  | 18   | Q See If you agree with this  |
| 19   | PJ's way," and that's March 30, 2005?  | 19   | definition —  |
| 20   | A Yes.   | 20   | MR. GONZALEZ: Again. Objection  |
| 21   | Q And 197 is your May 9 to 13,   | 21   | to scope.   |
| 22   | 2005 Issue of Client Server News 2000,   | 22   | O Herodin, noun, a woman regarded   |
| 23   | correct?   | 23   | as scolding and vicious.  |
| 24   | A Yeah.  | 24   | A Uh-huh.   |
| 25   | Q And the lead story is "Who is .  | 25   | Q Is that a definition that   |
|  | Page 67  | •  | Page 69   |
| 1 2  | O'Gara   | 1 2  | Page 69 O'Gara applies to your use of the word berodin?   |
|  |  | 2  | O'Gara applies to your use of the word herodin?   |
| 2  | O'Gara Pamela Jones," correct?  A Yeah.  | 2  | O'Gara applies to your use of the word herodin? A I think it's accurate.  |
| 2<br>3   | O'Gara Pamela Jones," correct?  A Yeah.  Q Is there a causal relationship  | 2<br>3<br>4  | O'Gara applies to your use of the word herodin? A 1 think it's accurate. Q Scolding and vicious?  |
| 2<br>3<br>4<br>5   | O'Gara Pamela Jones," correct?  A Yeah. Q Is there a causal relationship between Blake Stowell's e-mail to you and   | 2<br>3<br>4<br>5   | O'Gara applies to your use of the word herodin? A I think it's accurate. Q Scolding and vicious? A Uh-huh.  |
| 2<br>3<br>4<br>5<br>6  | O'Gara Pamela Jones," correct?  A Yeah. Q Is there a causal relationship between Blake Stowell's e-mail to you and the appearance of the story in Client   | 2<br>3<br>4<br>5<br>6  | O'Gara applies to your use of the word herodin? A I think it's accurate. Q Scolding and vicious? A Uh-huh. Q As you sit here today, do you  |
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18 (l'ages 66 to 69)

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**)**:

|          | waureen  | V G | <del></del>                                 |
|----------|--|-----|---|
|          | Page 70  |     | - Page 72                                   |
| 1        | O'Gara   | 1   | O'Gara                                      |
| 2        | that's been previously marked as a                   | 2   | Q And then on May 28th, Maureen             |
| 3        | deposition exhibit.                                  | 3   | calls my cell phone at 6:30 a.m. She had    |
| 4        | A I don't need a number?                             | 4   | this from 1998. She asked if there is any   |
| 5        | Q It has one on it already. It's                     | 5   | news since she is doing a story. I tell     |
| 6        | part of the advanced technology we use in            | в   | her no comment and to call Gary Schuster.   |
| 7        | this practice.                                       | 7   | And then May 28th Novell sends letter to    |
| 8        | So this document 1024 is a set                       | В   | SCO challenging them to prove copyright and |
| 9        | of notes by Chris Stone that he took at              | 9   | patent ownership.                           |
| 10       | the, in 2003 to recount what he recalled of          | 10  | Do you see that?                            |
| 11       | his contacts about the SCO matter.                   | 11  | A Yes.                                      |
| 12       | MS. FOLEY: Actually, can you                         | 12  | Q Do you disagree with what Chris           |
| 13       | just say that again? Are you                         | 13  | recounted here about his contacts with you? |
| 14       | representing to us what this is?                     | 14  | A Yes.                                      |
|          | MR. JACOBS: Yes.                                     | 15  | Q Can you step us through your              |
| 15       | MS. FOLEY: So say it again.                          | 16  | disagreements?                              |
| 16       | MR. JACOBS: -1024 is a set of                        | 17  | A Where do I begin?                         |
| 17       | notes by Chris Stone that he recorded                | 18  | Q Well, did you call him at 9 p.m.          |
| 18<br>19 | in 2003 to recount what he recalled of               | 19  | on May 27th?                                |
| 20       | his contacts about the SCO matter.                   | 20  | A I remember we spoke. It was the           |
| 21       | A His what about the SCO matter?                     | 21  | evening. I don't think it was 9 p.m., but   |
| 22       | Q Contacts.  | 22  | I could be wrong about that.                |
| 23       | A Contacts, okay.                                    | 23  | Q When you and did you call                 |
| 24       | Q And he talks about you                             | 24  | him?  |
| 25       | A On page 3.   | 25  | A I don't remember.                         |
| 123      | A On page of   |     |   |
|          | Page 71  | F   | Page 73                                     |
| 1        | O'Gara   | 1   | O'Gara                                      |
| 2        | Q Right, May 27, 9 p.m.                              | 2   | Q Did you begin the conversation            |
| 3        | A Yeah.  | 13  | by asking him about a letter that Novell    |
| 4        | Q So just to get the chronology                      | 4   | planned to send to SCO?                     |
| 5        | right, May 28th, 2003 is the date of                 | 5   | A I don't no, I don't remember.             |
| 6        | Exhibit 1080, the article on the ownership           | 6   | Q Did you ask him what he had told          |
| 7        | issue?   | 7   | the Wall Street Journal?                    |
| 8        | A Yeah, uh-huh.                                      | 8   | A I don't remember. I don't even            |
| 9        | <ul> <li>And so he is recording here that</li> </ul> | 9   | know what the context is.                   |
| 10       | at May 27 in the evening before Maureen              | 10  | Q Did you ask him about Hamachi,            |
| 11       | O'Gara from Client Server News calls me out          | 11  | with a capital H?                           |
| 12       | at my house. She starts quizzing me about            | 12  | A it's possible. I don't know.              |
| 13       | a letter we are about to send to SCO. She            | 13  | Q Do you recall what your interest          |
| 14       | wants to know what we told the Wall Street           | 14  | in something called Hamachi was?            |
| 15       | Journal, what is Hamechi, what we plan to            | 15  | A Hamachi is a code name.                   |
| 16       | do with SCO, why it was timed on this day,           | 16  | Q For what?                                 |
| 17       | is IBM involved, et cetera. I refused to             | 17  | A I don't remember anymore.                 |
| 18       | answer any of her questions. I was quite             | 18  | Q For a software project?                   |
| 19       | amazed and disturbed at how much detail she          | 19  | A Probably.                                 |
| 20       | had. She asked me it she was hot or cold.            | 20  | Q Did you ask him what Novell               |
| 21       | I told her no comment and to call Gary               | 21  | planned to do with SCO?                     |
| 22       | Schuster tomorrow. She clearly has a                 | 22  | A This is just                              |
| 23       | source somewhere in Novell.                          | 23  | mischaracterization. That's okay.           |
| 24       | Do you see that?                                     | 24  | Q Well, as you sit here today, do           |
| 25       | A Uh-huh.  | 25  | you have a recollection of whether you      |
|          |  |     |   |

19 (Pages 70 to 73)

|     |          |   | _ : |  |
|-----|----------|---|-----|--|
| Γ   |          | Page 74   |     | Page 76  |
| 1   | 1        | O'Gera  | 1   | O'Gara   |
|     | 2        | asked him what Novell planned to do with                                  | 2   | before, we're not in the habit of thinking   |
|     | 3        | SCO?  | 3   | about the stock market, and it was he who  |
| •   | 4        | A I think that if we go back to   | 4   | drew my attention to the fact that that  |
| 1   | 5        | the original story, it says what they                                     | 5   | day, the day that they were going to send  |
|     | 6        | intended to do, and I got that from Stone.                                | 6   | the cease and desist letter was timed to   |
|     | 7        | Q So I take it that the best  | 7   | coincide with SCO's earnings release.  |
|     | 8        | recollection you have of your conversation                                | 8   | Q My question to you is slightly   |
|     | 8        | with Stone in terms of a source other than                                | 9   | different, which is whether he volunteered   |
|     | 0        | your memory is to go to the story itself,                                 | 10  | on the topic of timing, or as he says here   |
| 1   | 1        | is that right?  | 11  | in his memo, you asked him about the   |
| ŧ   | 2        | A Say that again?   | 12  | timing,  |
|     | 13       | Q Aside from your memory, what  | 13  | A And I am testifying that he  |
| ł   | 14<br>14 | you're looking at as you're answering my                                  | 14  | volunteered it.  |
| 1   | 15       | questions is a story, right?  | 15  | Q He volunteered   |
| 1   |          | A No — you mean, are you doubting   | 16  | A He volunteered the connection.   |
| 1   | 16       | that I remember having the conversation                                   | 17  | He supplied the causality. I didn't. He  |
| ı   | 17       | with Chris and that he said that the reason                               | 18  | did.   |
|     | 18       | that they were sending the letter on that                                 | 19  | Q I got that.  |
| Ł   | 19       | that they were serious the remained by                                    | 20  | What I'm asking you is, did you  |
|     | 20       | day was because of the earnings, no.                                      | 21  | ask him why and then he supplied the   |
|     | 21       | Q I'm sorry, that wasn't my   | 22  | causality, or if you don't remember  |
|     | 22       | question.   | 23  | that's   |
| - 1 | 23       | A Okay.   | 24  | A I don't remember.  |
|     | 24       | Q I said as you sit here today, do  | 25  | Q Okay.  |
| 1   | 25       | you have a recollection of whether you                                    | {25 | Q Okay.  |
| ŀ   |          | D. == 75  |     | Page 77  |
| -   |          | Page 75   | 1   | O'Gara   |
| 1   | 1        | O'Gara  | 2   | Did you ask him about whether  |
| 1   | 2        | asked him what Novell planned to do with                                  | 3   | IBM was involved in the letter?  |
| ì   | 3        | SCO. You said, I think, if we go back to                                  | 4   | A I don't remember.  |
| 1   | 4        | the original story, it says what they                                     | 5   | Q Did he refuse to answer some of  |
| 1   | . 5      | intended to do, and I got that from Stone.                                | 6   | your questions?  |
| ١   | 6        | And I said, I take it from your answer that                               | 7   | A Everybody always refuses to  |
| ١   | 7        | the best source you have other than your                                  | 8   | answer some of my questions.   |
| ١   | 8        | memory of what happened in that   |     | Q And you're interring from that   |
|     | 9        | conversation is the story itself.   | 9   | that in your conversation  |
|     | 10       | A Well, that is a distillation of   | 111 | A It's possible.   |
| ١   | 11       | that conversation, yes.  Q And it's the only distillation                 | 12  | Q Don't remember?  |
|     | 12       | Q And it's the only distillation you have. You don't have any other place | 13  | A Don't remember.  |
| 1   | 13       | you have. Tou upint have any other place                                  | 14  | Q Did you use the expression hot   |
| - [ | 14       | to go to find out what happened in that                                   | 15  | or cold as in am I hot or cold with this   |
| - ( | 15       | conversation, do you?  MS. FOLEY: Beside from her                         | 16  | story idea?  |
|     | 16       |   | 17  | A That's not logical.  |
| ા } | 17       | memory.   | 18  | Q Is that an expression you  |
| ı   | 18       | A Yes, aside from my memory, yes.   | 19  | sometimes use?   |
|     | 19       | Q Okay.   | 20  |  |
|     | 20       | Did you ask him   | 21  | Q So your best recollection based  |
|     | 21       | A Does he   | 22  |  |
|     | 22       | Q Did you ask him, Ms. O'Gara, dld  | 23  |  |
| ]   | ~~       |   | 123 | CONTRACTOR OF THE CONTRACTOR O |
|     | 23       | you ask him why the letter to Novell was                                  |     | te incorrant this reference to use of hot  |
|     | 24       | timed on this day?  | 24  | is incorrect, this reference to use of hot   |
|     |          |   |     | is incorrect, this reference to use of hot   |

20 (Pages 74 to 77)

|  |  |  | _  |
|--|--|--|--|
|  | Page 78  |  | Page 8   |
| 1  | O'Gara   | 1                                      | O'Gara   |
| 2  | A The story is fully developed,  | 2                                      | A I don't know if it was   |
| 3  | sir. So it's not a matter of am I hot or   | 3                                      | particularly 1998, but I've had Chris' cell  |
| 4  | cold about it. It's fully developed. So I  | 4                                      | phone number for years. He was the head of   |
| 5  | can't answer your question because it's not  | 5                                      | the object management group.   |
| 6  | • • •  | 6                                      | Q And you had developed a  |
|  | logical.   | 7                                      | reporter's relationship with him in that   |
| 7  | Q The question isn't logical?  | ľ                                      |  |
| 8  | A No, it isn't because you   | 8                                      | capacity?  |
| 9  | know, it was like I was on a fishing   | 9                                      | A We talked a lot.   |
| 10   | expedition and all this really didn't  | 10.                                    | Q Did you have you said you  |
| 11   | happen.  | 11                                     | talked a lot. I asked you if you developed   |
| 12   | Q Forgive me, but it seems to me   | 12                                     | a reporter's relationship. Did you have a  |
| 13   | that you could have elicited information   | 13                                     | reporter's source relationship with Chris  |
| 14   | and developed a story using the expression   | 14                                     | Stone dating back some years?  |
| 15   | am I hot or cold, and my question to you   | 15                                     | A He was an executive of a   |
| 16   | is   | 16                                     | consortium through which much informatio   |
| 17   | A Then he would have had to have   | 17                                     | passed.  |
| 18   | given me the story, wouldn't he have?  | 18                                     | Q To you?  |
| 19   |  | 19                                     | A No, through which it passed.   |
|  | Q I don't know. I'm just asking  | 20                                     | I'm trying to capture as much of it as i   |
| 20   | you if in your conversation with Chris   | 1                                      |  |
| 21   | Stone on the evening of May 28th you used  | 21                                     | can, but not - I suppose the enswer to the   |
| 22   | the expression am I hot or cold.   | 22                                     | question is yes.   |
| 23   | A I don't know.  | 23                                     | Q And the only reason I have to  |
| 24   | Q Did he at any point say I have   | 24                                     | ask this is to ask you whether you had a   |
| 25   | no comment?  | 25                                     | personal friendship with Mr. Stone as  |
|  | Page 79  | -                                      | Page (   |
| 1  | O'Gara   | 1                                      | O'Gara   |
| 2  | A I don't know.  | 2                                      | opposed to a reporter's source   |
| 3  | Q Did he tell you to call Gary   | 3                                      | relationship.  |
| 4  | Schuster?  | 4                                      | A I had, you know, a lamb chop   |
|  |  | 1                                      |  |
| 5  | A I don't know.  | 5                                      | relationship with him.   |
| 6  | Q And he says at the end of this   | 6                                      | Q Which you've had with many   |
| 7  | paragraph, "She clearly has a source   | 7                                      | people?  |
| 8  | somewhere in Novell," implying that it is  | 8                                      | A I have a rolodex full of men   |
| 9  | not he.  | 9                                      | with whom I've had a lamb chop   |
| 10   | So my question to you is, did  | 10                                     | relationship, and they're all special to   |
| 11   | you have a source other than Chris Stone in  | 11                                     | me, every single one of them.  |
| 12   | Novell on the topic of Novell's Intention's  | 12                                     | Q That's what they believe.  |
| 13   | vis-a-vis SCO around May of 2003?  | 13                                     | A God love them.   |
|  | A No.  | 14                                     | Q Did you ask him if there's any   |
| 14   | Q The next entry is May 28th,  | 15                                     | news on the morning of May 28, did you as  |
|  | C HE HOY BINA IS MICA SOU?   | 4                                      | Mr. Stone If there's any news?   |
| 15   |  | 16                                     |  |
| 15<br>16   | Maureen calls my cell phone at 6:30 a.m.   |  | A Sir. I do not do mernings. I'm   |
| 15<br>16<br>17                                     | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  | 17                                     |  |
| 15<br>16<br>17<br>18                               | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says   | 17<br>18                               | a night person.  |
| 15<br>16<br>17<br>18<br>19                         | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says she had this, I think meaning the cell  | 17<br>18<br>19                         | a night person.  Q So your best recollection   |
| 15<br>16<br>17<br>18<br>19<br>20                   | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says she had this, I think meaning the cell phone number, from 1998.   | 17<br>18<br>19<br>20                   | a night person.  Q So your best recollection A Okay, that means I would have   |
| 15<br>16<br>17<br>18<br>19<br>20<br>21             | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says she had this, I think meaning the cell phone number, from 1998.  Do you see that?                             | 17<br>18<br>19<br>20<br>21             | a night person.  Q So your best recollection A Okay, that means I would have had to stay up all night and I don't think  |
| 15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says she had this, I think meaning the cell phone number, from 1998.  Do you see that?  A Yes.                     | 17<br>18<br>19<br>20<br>21<br>22       | a night person.  Q So your best recollection A Okay, that means I would have had to stay up all night and I don't think that +- I mean, I have spent many a night                                    |
| 15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says she had this, I think meaning the cell phone number, from 1998.  Do you see that?  A Yes.  Q Is that correct? | 17<br>18<br>19<br>20<br>21<br>22<br>23 | a night person.  Q So your best recollection A Okay, that means I would have had to stay up all night and I don't think that I mean, I have spent many a night working over this kind of stuff. It's |
| 15<br>16<br>17<br>18<br>19<br>20<br>21<br>22       | Maureen calls my cell phone at 6:30 a.m.  A I doubt it.  Q Did you have and then he says she had this, I think meaning the cell phone number, from 1998.  Do you see that?  A Yes.                     | 17<br>18<br>19<br>20<br>21<br>22       | a night person.  Q So your best recollection A Okay, that means I would have had to stay up all night and I don't think that +- I mean, I have spent many a night                                    |

21 (Pages 78 to 81)

|  | Mauree   | 100                                    |  |
|--|--|--|--|
|  | Page 82  |  | Page 8   |
| 1  | O'Gara   | 1                                      | O'Gara   |
| 2  | is accurate and that they were going to  | 2                                      | Q You didn't go to anybody else at   |
| 3  | deliver it that day, which they did, okay?   | 3                                      | SCO for comment, you went to Blake Stowell?  |
| 4  | Q And you don't have a   | 4                                      | A Blake Stowell is the gatekeeper,   |
| 5  | recollection of whether in the morning call  | 5                                      | all right? And this is a formal kind of a  |
| 6  | he said -  | 6                                      | situation. So it's best to stick to the  |
| 7  | A No, I don't know that there was  | 7                                      | rules rather than lumping ahead. To go to  |
|  | a morning call.  | 8                                      |  |
| 8  |  |  | him first and ask for comment, it's  |
| 9  | Q Right.   | 9                                      | possible that I brought other people into  |
| 10   | A But practices you know, I  | 10                                     | the conversation.  |
| 11   | like to be — the most important thing is   | 11                                     | Q You don't recall?  |
| 12   | to be accurate, okay? And you fact check   | 12                                     | A I'm not one hundred percent on   |
| 13   | and you double check and you make sure that  | 13                                     | it, so no.   |
| 14   | they're actually going to go ahead and do  | 14                                     | Q And in the conversation with   |
| 15   | this.  | 15                                     | Stowell you testifled earlier that you   |
| 16   | Q So you may have had a call in  | 16                                     | relayed to him what Chris Stone had told   |
| 17   | the morning?   | 17                                     | you as part of your effort to elicit   |
| 18   | A I may have had a call.   | 18                                     | comment from Stowell, correct?   |
| 19   | Q And you don't recall the   | 19                                     | A Say that again?  |
| 20   | substance of that discussion?  | 20                                     | The state of the s |
|  |  |  |  |
| 21   | A Well, since - it would have  | 21                                     | Stowell, you testified earlier that you  |
| 22   | been about, you know, are they going to go   | 22                                     | relayed to him what Chris Stone had told   |
| 23   | ahead and do, did they do it, what's   | 23                                     | you as part of your effort to elicit   |
| 24   | happening here, yes, because this thing  | 24                                     | comment from Stowell?  |
| 25   | went out at 8:00 in the morning, at least  | 25                                     | A Right. It's getting  |
|  | Page 83  |  | Page 8   |
| 1  | O'Gara   | 3                                      | O'Gara   |
| 2  | my copy did, somebody else's is earlier.   | 2                                      | complicated, isn't it? Yes is the answer   |
| 3  |  | 3                                      | to that.   |
|  |  |  |  |
| 4  | conversation with Chris Stone did you have   | 4                                      | Q And in the conversation, in that   |
| 5  | a conversation with let me start over  | 5                                      | conversation with Stowell you told him what  |
| 6  | again.   | 6                                      | we've called the causality point, correct?   |
| 7  | We covered this earlier, but I   | 7                                      | MS. FOLEY: Object to the form  |
| 8  | want to make sure I have the facts correct.  | 8                                      | of the question. What do you mean by   |
| 9  | You had a conversation with Blake Stowell  | 9                                      | causality point?   |
| 10   | asking him for information related to the  | 10                                     | Q Do you understand what I mean by   |
| 11   | story that appears in Exhibit 1080, the May  | 11                                     | that?  |
| 12   | 28 Client Server News, right?  | 12                                     | A Why don't we oblige the lady   |
| 13   | A This, are we talking about   | 13                                     | and -  |
| 14   | Novell to try and shoot down?  | 14                                     | O In your conversation with  |
|  | Q Yes.   | 15                                     | Stowell, you told him that Chris Stone had   |
| 15   |  | 16                                     | told you that Novell Intentionally timed   |
|  | A He's a public relations person   |  |  |
| 16   | A He's a public relations person. It's typical to get two sides of the story   | i                                      | ITS AWARESHID ABBALLACEMENT TO COINCIDE WITH   |
| 16<br>17   | It's typical to get two sides of the story.  | 17                                     |  |
| 16<br>17<br>18   | It's typical to get two sides of the story.  I went to him not for — what did you call   | 17<br>18                               | SCO's earnings release, correct?   |
| 16<br>17<br>18<br>19   | It's typical to get two sides of the story.  I went to him not for what did you call it, information?  | 17<br>18<br>19                         | SCO's earnings release, correct?  A Yes.   |
| 16<br>17<br>18<br>19<br>20                                     | It's typical to get two sides of the story.  I went to him not for what did you call  it, information?  Q I'm sorry, I'm just trying to  | 17<br>18<br>19<br>20                   | SCO's earnings release, correct?  A Yes.  Q Did you ever tell anyone else  |
| 16<br>17<br>18<br>19<br>20<br>21                               | It's typical to get two sides of the story.  I went to him not for what did you call  it, information?  Q I'm sorry, I'm just trying to get  | 17<br>18<br>19<br>20<br>21             | SCO's earnings release, correct?  A Yes.  Q Did you ever tell anyone else well, ever is a big question In the time   |
| 16<br>17<br>18<br>19<br>20<br>21                               | It's typical to get two sides of the story.  I went to him not for what did you call  it, information?  Q I'm sorry, I'm just trying to get A I went to him for comment.                                       | 17<br>18<br>19<br>20<br>21<br>22       | SCO's earnings release, correct?  A Yes.  Q Did you ever tell anyone else well, ever is a big question In the time period in question, the end of May, early   |
| 16<br>17<br>18<br>19<br>20<br>21<br>22<br>23                   | It's typical to get two sides of the story.  I went to him not for — what did you call it, information?  Q I'm sorry, I'm just trying to get —  A I went to him for comment.  Q Comment, terrific. You went to | 17<br>18<br>19<br>20<br>21<br>22<br>23 | SCO's earnings release, correct?  A Yes.  Q Did you ever tell anyone else well, ever is a big question In the time period in question, the end of May, early June 2003, did you tell anyone else that  |
| 15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25 | It's typical to get two sides of the story.  I went to him not for what did you call  it, information?  Q I'm sorry, I'm just trying to get A I went to him for comment.                                       | 17<br>18<br>19<br>20<br>21<br>22       | A Yes. Q Did you ever tell anyone else well, ever is a big question in the time period in question, the end of May, early  |

22 (Pages 82 to 85)

|  | Page 86   |  | Page 88  |
|--|---|--|--|
| 1  | O'Gara  | 1  | O'Gara   |
| 2  | but I believe I told Dari McBride. I don't  | 2  | destroyed, if it was weeks later.  |
| 3  | think I had the conversation with anybody   | 3  | Q Was it weeks later?  |
| 4  | else.   | 4  | A I don't remember. My Impression  |
| 5  | Q What were the circumstances of  | 5  | was it was in the same time frame. As a  |
| 6  | your conversation with Darl McBride on this   | В  | matter of fact, I thought it was the 28th  |
| 7  | point?  | 7  | of May, but I could be wrong.  |
| 8  | A As I remember, Blake went and   | 8  | Q If it was the 28th of May  |
| 9  | told Darl and Darl called me.   | 9  | A I'm sorry, the 27th of May, the  |
| 10   | Q And Dari asked you what?  | 10   | Tuesday.   |
| 11   | A Is this what you told Blake   | 11   | Q If it was the 27th of May, you   |
| 12   | Stowell.  | 12   | still had your short phrase notes?   |
| 13   | Q And what did you say to him?  | 13   | A Yeah.  |
| 14   | A Yes.  | 14   | Q And so when Darl McBride called  |
| 15   | Q And specifically this was what,   | 15   | Aon nb   |
| 16   | when Darl spoke to you?   | 16   | A If he did in that time, which I  |
| 17   | A The causality.  | 17   | think he did, but I can't swear to that.   |
| 18   |   | 18   | Q And you don't remember whether   |
|  | Q That Novell had intentionally timed its ownership announcement to   | 19   | you were looking at your short phrase notes  |
| 19   | coincide with SCO's earnings release?   | 20   | when he called you back for a confirmation?  |
| 20   |   | 21   | A It was a sentence or expression  |
| 21   | A Yes.  | 22   | that stuck in the mind at the time, so you   |
| 22   | Q So Darl McBride called you up   | 23   | wouldn't have really actually needed the   |
| 23   | and you confirmed to Darl that you had told   | 24   | notes, but yes, they would have been there   |
| 24<br>25   | Stowell A Right, and he repeated to me the  | 25   | Q But your best recollection is  |
| 23   | A Right, and he repeated to me the  |  | 200, 700, 200, 000, 000, 000, 000, 000,  |
|  | Page 87   |  | Page 8   |
| 4  | 212   |  |  |
| 1  | O'Gara  | 1 1  | O'Gara   |
|  | exact words, which I can't remember   | 1 2  | O'Gara<br>Darl calls you up, he's confirming exactly   |
| 2  | exact words, which I can't remember   | •  |  |
|  | exact words, which I can't remember anymore, that I had told Blake that Chris   | 2  | Darl calls you up, he's confirming exactly   |
| 2<br>3   | exact words, which I can't remember   | 2 3  | Darl calls you up, he's confirming exactly what Stone says?  |
| 2<br>3<br>4  | exact words, which I can't remember<br>anymore, that I had told Blake that Chris<br>used and Blake accurately reported that to  | 2<br>3<br>4  | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.   |
| 2<br>3<br>4<br>5<br>6  | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  | 2<br>3<br>4<br>5   | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes   |
| 2<br>3<br>4<br>5   | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to  | 2<br>3<br>4<br>5<br>6  | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.  Q So let me just ask this, let me  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8                                    | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to double check, did you have your short  | 2<br>3<br>4<br>5<br>6<br>7   | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.   |
| 2<br>3<br>4<br>5<br>6<br>7   | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to double check, did you have your short phrase notes?  | 2<br>3<br>4<br>5<br>6<br>7<br>8  | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.  Q So let me just ask this, let me  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10                         | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to double check, did you have your short phrase notes?  A No, because I didn't – no. I  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.  Q So let me just ask this, let me see if we've got a catalog of the various  |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10                         | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to double check, did you have your short phrase notes?  A No, because I didn't — no. I mean, I remembered it then, but it's what,   | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9   | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.  Q So let me just ask this, let me see if we've got a catalog of the various communications around what Chris Stone sai   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10                         | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to double check, did you have your short phrase notes?  A No, because I didn't – no. I  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10   | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.  Q So let me just ask this, let me see if we've got a catalog of the various communications around what Chris Stone sal to you.   |
| 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12             | exact words, which I can't remember anymore, that I had told Blake that Chris used and Blake accurately reported that to McBride who then came back to me to double check.  Q When McBride came back to you to double check, did you have your short phrase notes?  A No, because I didn't — no. I mean, I remembered it then, but it's what, 3 or 4 years later now, so.  Q But your best recollection is  | 2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12   | Darl calls you up, he's confirming exactly what Stone says?  A Yeah.  Q You didn't go back to your notes at that point?  A No, I didn't have to.  Q So let me just ask this, let me see if we've got a catalog of the various communications around what Chris Stone sal to you.  Number one, we have the article itself, Exhibit 1080, correct?  A Yes.   |
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23 (Pages 86 to 89)

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|     | Mauree                                      | r O'C | Sara  |
|-----|---|-------|---|
|     | Page 90                                     |       | Page 92                                     |
| 1 1 | O'Gara                                      | 1.    | O'Gara                                      |
| 2   | communications that you can think of as you | 2     | A No.                                       |
| 3   | sit here today that, in which the substance | ā     | Q If you had a financial interest           |
| 4   | of Chris Stone's statement to you about the | 4     | in a company you were reporting on, would   |
| 5   | reason for the timing of Novell's ownership | 5     | it be your practice to disclose that?       |
| 6   | announcement was set forth?                 | 6     | A it's become fashionable in the            |
| 7   | A Why don't we repeat that                  | 7     | last two years for people to do that, but i |
| 8   | question.                                   | 8     | didn't, I wouldn't and I probably wouldn't  |
| 9   | Q Okav.                                     | 9     | even know if I had a financial interest     |
| 10  | So the question is, what are all            | 10    | because I don't look at it, you know, it's  |
| 111 | the places where the substance of Chris     | 111   | sort of like blind trust.                   |
| 12  | Stone's statement to you about timing are   | 12    | Q is it actually a blind trust?             |
| 13  | set forth, and the catalog is your          | 13    |   |
| 14  |   | 14    |   |
| 1   | recollection of what Chris said to you,     |       | might as well be.                           |
| 15  | your communication to Blake Stowell, the    | 15    | Q You don't actually know what              |
| 16  | call from Darl McBride and the substance of | 16    | companies your investment                   |
| 17  | Exhibit 1080, your May 28th, 2003 Client    | 17    | A I have absolutely no idea, and I          |
| 18  | Server News?                                | 18    | have all the unopened mail to prove it, all |
| 19  | MR. GONZALEZ: Objection.                    | 19    | those statements, right, that come all the  |
| 20  | THE WITNESS: Why are we                     | 20    | time, they're not opened, none of them. I   |
| 21  | objecting?                                  | 21    | have no idea.                               |
| 22  | MR. GONZALEZ: One of things he              | 22    | Q Do you have any personal                  |
| 23  | said is your recollection, and that's       | 23    | relationships aside from a lamb chop        |
| 24  | different from the communication            | 24    | reporter's source relationship with anyone  |
| 25  | itself. If there are catalog                | 25    | at SCO?                                     |
|     | Page 91                                     |       | Page 93                                     |
| 1   | O'Gara                                      | 1     | O'Gara                                      |
| 2   | communications, it should be all            | 2     | A No.                                       |
| 3   | communications. That's all. It's            | 3     | Q IBM?                                      |
| 4   | just a legal technicality.                  | 4     | A No. Can anybody have a real               |
| 5   | A Keeping in mind that legal                | 5     | relationship with IBM?                      |
| 6   | technicality, the answer is no.             | 6     | Q Novell?                                   |
| 7   | Q No, there's nothing else?                 | 7     | A No.                                       |
| 8   | A There's nothing else.                     | 8     | MR. JACOBS: No further                      |
| 9   | Q Do you have a rule at G2 about            | 9     | questions.                                  |
| 10  | disclosure of any financial interests you   | 10    | MR. GONZALEZ: If you don't                  |
| 111 | have in companies you report on?            | 111   | mind, why don't we take a 5 minute          |
| 12  | A We try not to.                            | 12    | break, and partly because I want to         |
| 13  | Q You try not to have a financial           | 13    | see the exhibit which I couldn't            |
| 14  | interest?                                   | 14    | review.                                     |
| 15  | A Right. It's not a good idea,              | 15    | THE VIDEOGRAPHER: We're going               |
| 16  | Q And do you, in fact, have a               | 16    | off the record. The time is 1:25.           |
| 17  | financial interest today in SCO?            | 17    | (Recess taken 1:25 p.m.)                    |
| 18  | A No.                                       | 18    | THE VIDEOGRAPHER: We are now                |
| 19  | Q Noveil?                                   | 19    | back on the record. The time is now         |
| 20  | A No.                                       | 20    | 1:35.                                       |
| 21  | Q IBM?                                      | 21    | ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,     |
| 22  | A No.                                       | 22    | EXAMINATION BY                              |
| 23  | Q Did you in the late spring of             | 23    | MR. GONZALEZ:                               |
| 24  | 2003 have a financial interest in any of    | 24    | Q Ms. O'Gara, I'd like to ask you           |
| 25  | those companies?                            | 25    | just a couple of follow up questions        |
| 123 | mose comparates (                           | 23    | Jasea couple of Johna ab daesions           |

24 (Pages 90 to 93)

|  | Page 94  |  | Page   |
|--|--|--|--|
| 1  | O'Gara   | 1  | O'Gara   |
| 2  | following up on the conversation you've  | 2  | Stone had said that, and that's what makes   |
| 3  | been having with Mr. Jacobs and  | 3  | It stick in my mind so vividly.  |
| 4  | A And it's been a charming   | 4  | Q And when you say they started  |
| 5  | conversation, Mr. Jacobs.  | 5  | grilling you, who are you referring to?  |
| 6  | Q And the first one is in  | 6  | A As I recall, it was - well,  |
| 7  | reference to Exhibit 1024 where  | 7  | Stowell, he came through the phone at me   |
| 8  | A Wait a minute. Wait a minute.  | 8  | and I remember talking to McBride then. I  |
| 9  | Oh, is that the  | 9  | meen McBride is usually, usually stayed or   |
| 10   | Q It's the alleged recap by  | 10   | of stuff, and the fact that he had been  |
| 11   | Mr. Stone of his contacts related to the   | 11   | involved at all was unusual.   |
| 12   | litigation of the case.  | 12   | Q Just to further  |
| 13   | A Okay.  | 13   | A And they wanted, you know, the   |
| 14   | Q And do you recall that   | 14   | exact words and all of that, which I had at  |
| 15   | Mr. Jacobs showed you a couple of entries  | 15   | the time, but don't have now.  |
| 16   | in Exhibit 1024?   | 16   | Q And just to clarify, when you  |
| 17   | A Yes.   | 17   |  |
| 18   | Q That purported to be Mr. Stone's   | 1.35   | say that Mr. Stowell came through the  |
| -  |  | 18   | phone, what do you mean by that? Can you   |
| 19   | record of his conversations with you on the  | 19   | elaborate a little bit?  |
| 20   | evening of May 27th and the morning of May   | 20   | A How can I best describe it? You  |
| 21   | 28th, 2003, Is that correct?   | 21   | know, it's like he sat up and took notice  |
| 22   | A Yes.   | 22   | and, you know, was repeatedly - you know   |
| 23   | Q And Mr. Jacobs asked you about   | 23   | he asked me any number of times what ha  |
| 24   | some of the details that Mr. Stone   | 24   | exactly happened. He had more sensitivity  |
| 25   | apparently set forth in this recount?  | 25   | to the thing than I did.   |
|  | Page 95  |  | Page   |
| 1  | O'Gara   | 1  | O'Gera   |
| 2  | A Yes.   | 2  | Q Did you get the impression that  |
| 3  | Q And do you recall that you did   | 3  | he was surprised or shacked, or what would   |
| 4  | not have any particular recollection one   | 4  | be the adjective?  |
| 5  | way or the other about some of the details,  | 5  | A Yeah, both of them would be, I   |
| 6  | for example, the time of the call in the   | 6  | think, accurate.   |
| 7  | evening, who called whom, whether or not   | 7  | Q Okay.  |
| 8  | Mr. Stone referred you to Gary Schuster,   | 8  | A It was their level of interest,  |
| 9  | those sorts of details, do you recall again  | 9  | you know, in the thing.  |
| 10   | not having a specific recollection one way   | 10   | Q Okay.  |
| 11   | or the other about those details?  | 111  | And do you recall speaking with  |
| 12   | A Yes.   | 12   | Mr. Jacobs a little while ago about this   |
| 13   | Q So my question for you is, so  | 13   | concept of causality?  |
|  | how is it that you do recall the comment by  | 14   | A Yes.   |
| 14   | new lest man you do rocall the continuent by   |  | Q Which I think both of you were   |
|  | Mr. Stone that we've been focusing on  | 115  |  |
| 15   | Mr. Stone that we've been focusing on, pamely the timing of Novell's appoundement  | 15<br>16                                     |  |
| 15<br>16   | namely the timing of Novell's announcement   | 16   | using as a shorthand for the relationship  |
| 15<br>16<br>17   | namely the timing of Novell's announcement with SCO's earning call?  | 16<br>17                                     | using as a shorthand for the relationship between the announcement by Novell and the   |
| 15<br>16<br>17<br>18   | namely the timing of Novell's announcement with SCO's earning call?  A Because SCO made such a big deal  | 16<br>17<br>18                               | using as a shorthand for the relationship<br>between the announcement by Novell and th<br>earnings called by SCO, is that correct?   |
| 15<br>16<br>17<br>18<br>19   | namely the timing of Novell's announcement with SCO's earning call?  A Because SCO made such a big deal about it.  | 16<br>17<br>18<br>19                         | using as a shorthand for the relationship<br>between the announcement by Novell and th<br>earnings called by SCO, is that correct?<br>A Yes.   |
| 15<br>16<br>17<br>18<br>19<br>20                                     | namely the timing of Novelt's announcement with SCO's earning calt?  A Because SCO made such a big deal about it.  Q And what do you mean by SCO made  | 16<br>17<br>18<br>19<br>20                   | using as a shorthand for the relationship<br>between the announcement by Novell and the<br>earnings called by SCO, is that correct?<br>A Yes.<br>Q And so my question for you is,  |
| 15<br>16<br>17<br>18<br>19<br>20<br>21                               | namely the timing of Novelt's announcement with SCO's earning calt?  A Because SCO made such a big deal about it.  Q And what do you mean by SCO made a big deal out of it?  | 16<br>17<br>18<br>19<br>20<br>21             | using as a shorthand for the relationship<br>between the announcement by Novell and the<br>earnings called by SCO, is that correct?<br>A Yes.<br>Q And so my question for you is,<br>when you think of this concept of   |
| 15<br>16<br>17<br>18<br>19<br>20<br>21                               | namely the timing of Novelt's announcement with SCO's earning calt?  A Because SCO made such a big deal about it.  Q And what do you mean by SCO made a big deal out of it?  A Well, while I called in to get a  | 16<br>17<br>18<br>19<br>20<br>21<br>22       | using as a shorthand for the relationship between the announcement by Novell and the earnings called by SCO, is that correct?  A Yes.  Q And so my question for you is, when you think of this concept of causality, what do you have in mind as                                       |
| 15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23                   | namely the timing of Novell's announcement with SCO's earning call?  A Because SCO made such a big deal about it.  Q And what do you mean by SCO made a big deal out of it?  A Well, while I called in to get a statement from SCO, I'm used to asking the | 16<br>17<br>18<br>19<br>20<br>21<br>22<br>23 | using as a shorthand for the relationship between the announcement by Novell and the earnings called by SCO, is that correct?  A Yes.  Q And so my question for you is, when you think of this concept of causality, what do you have in mind as being the cause and the effect as you |
| 14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25 | namely the timing of Novelt's announcement with SCO's earning calt?  A Because SCO made such a big deal about it.  Q And what do you mean by SCO made a big deal out of it?  A Well, while I called in to get a  | 16<br>17<br>18<br>19<br>20<br>21<br>22       | using as a shorthand for the relationship between the announcement by Novell and the earnings called by SCO, is that correct?  A Yes.  Q And so my question for you is, when you think of this concept of causality, what do you have in mind as                                       |

25 (Pages 94 to 97)

|  | Page 98  |  | Page 100   |
|--|--|--|--|
| 1  | O'Gara   | 1  | O'Gara   |
| 2  | understanding is that - well, let me   | 2  | time it, it was your recollection that they  |
| 3  | rephrase that. It's not my understanding.  | 3  | wanted to time it so that it would happen  |
| 4  | What happened was that Novell  | 4  | at the same time SCO reported its earnings?  |
| 5  | put out a statement saying that it owned   | 5  | MR. GONZALEZ: Objection.   |
| 6  | UNIX. If it owned UNIX, then SCO didn't  | 6  | Mischaracterizes her prior testlmony.  |
| 7  | have a leg to stand on, and the reason that  | 7  | A Right.   |
| 8  | they were doing it particularly on that day  | 8  | MR. JACOBS: No further   |
| 9  | was to impact the stock.   | 9  | questions.   |
| 10   | Q And when you say that Novell   | 10   | A Right, I object.   |
| 11   | wanted to make a statement that it owned   | 11   | Q I'm sorry, I thought you said  |
| 12   | UNIX, do you mean that it wanted to make a   | 12   | right, I was right.  |
| 13   | statement that it owned the UNIX   | 13   | A No, right, I object. That's not  |
|  |  | 14   | right.   |
| 14   | copyrights?  | 15   | Q Well, let's go over it again.  |
| 15   | A It owned UNIX, yes, the  | 16   | What is your best recollection   |
| 16   | copyrights and owned UNIX, and that SCO didn't.  | 17   | of what Mr. Stone specifically said about  |
| 17.  |  | 18   | why Novell was Issuing the ownership   |
| 18   | MR. GONZALEZ: I have nothing further. Thank you.   | 19   | statement on the day it was issuing it?  |
| 19   | inition. Hank you.   | 20   | A it was because it was the day  |
| 20   | EVALUATION DV  | 21   | that they were bringing out their numbers.   |
| 21   | EXAMINATION BY MR. JACOBS:   | 22   | Q Their earnings report?   |
| 22   |  | 23   | A Right.   |
| 23   | Q Do you have any notes of your conversation with Mr. Stowell that you were  | 24   | Q And that's your best   |
| 24   | just recounting?   | 25   | recollection of what he said to you?   |
| 25   | Just reconnict t   | 20   | recollection of what the said to your  |
|  |  | ,  |  |
|  | Page 99  |  | Page 101   |
| 1  | Page 99<br>O'Gara  | 1  | Page 101<br>O'Gara   |
| 1 2  | <del></del>  | 1 2  | •  |
|  | O'Gara   | 1  | O'Gara   |
| 2  | O'Gara<br>A No.  | 2  | O'Gara<br>A Rìght  |
| 2  | O'Gara  A No. Q How about with Mr. McBride?  | 2<br>3   | O'Gara  A Rìght.  Q And that's all he said to you on   |
| 2<br>3<br>4  | O'Gara  A No. Q How about with Mr. McBride? A No.  | 2<br>3<br>4  | O'Gara  A Rìght. Q And that's all he said to you on that topic?  |
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|  | Page 102  | 1  | Page 104  |
|--|---|--|---|
| 1  | O'Gara  | 1  | Page 104<br>O'Gara  |
| 2  | MR. JACOBS: No further  | 2  |   |
| 3  |   | -  |   |
|  | questions.  | 3  | Q Including the chortle that you  |
| 4  | MR. GONZALEZ: I have one or two   | 4  | testified earlier about?  |
| 5  | more follow-ups, if you don't mind.   | 5  | A Yes.  |
| 6  |   | 6  | MR. GONZALEZ: Thank you.  |
| 7  | EXAMINATION BY  | 7  | Nothing further.  |
| 8  | MR. GONZALEZ:   | 8  | •   |
| 9  | Q Ms. Jacobs, you don't recall  | 9  | EXAMINATION BY  |
| 10   | A No, I'm sorry.  | 10   | MR. JACOBS:   |
| 11   | Q Ms. O'Gara  | 11   | Q And just to be clear, because   |
| 12   | MR. JACOBS: Or lamb chop.   | 12   | you're giving different answers to the two  |
| 13   | THE WITNESS: Right, as the case   | 13   | of us and I have to reconcile them  |
| 14   | may be.   | 14   | MS. FOLEY: Object to that.  |
| 15   | Q Is it fair to say you don't   | 15   | Q he conveyed this through the  |
| 16   | recall the specific words that Mr. Stone  | 16   |   |
| 17   | used when he talked about the causality as  |  | words that linked the timing of the   |
| 18   |   | 17   | ownership statement to the timing of the  |
| 19   | you've been saying?   | 18   | earnings release?   |
| j.   | A Right.  | 19   | A I'm trying to listen very   |
| 20   | Q But is it clear in your mind  | 20   | carefully to what you're saying. Could you  |
| 21   | that he conveyed to you this notion of a  | 21   | say that again?   |
| 22   | causality?  | 22   | Q Sure.   |
| 23   | A Yes.  | 23   | He conveyed this through the  |
| 24   | Q And specifically that he  | 24   | words that linked the timing of the   |
| 25   | conveyed to you that the reason for the   | 25   | ownership statement to the timing of the  |
|  |   |  |   |
|  | Page 103  | ŀ  | Page 105  |
|  |   |  |   |
| 1  | O'Gara  | 1  | O'Gara  |
| 2  | timing of Novell's announcement was to  | 2  | O'Gara<br>earnings release?   |
| 2<br>3   | timing of Novell's announcement was to impact or as you said earlier to upset the   | 2<br>3   | O'Gara earnings release? A Yes, I believe the answer to   |
| 2<br>3<br>4  | timing of Novell's announcement was to<br>impact or as you said earlier to upset the<br>price of SCO's stock?   | 2  | O'Gara earnings release? A Yes, I believe the answer to that question is yes, if I understand the   |
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| 2<br>3<br>4  | timing of Novell's announcement was to impact or as you said earlier to upset the price of SCO's stock?  A Yes.  Q And this conversation took place   | 2<br>3<br>4  | O'Gara earnings release? A Yes, I believe the answer to that question is yes, if I understand the way you're using the English language.  |
| 2<br>3<br>4<br>5   | timing of Novell's announcement was to impact or as you said earlier to upset the price of SCO's stock?  A Yes.   | 2<br>3<br>4<br>5                                       | O'Gara earnings release? A Yes, I believe the answer to that question is yes, if I understand the way you're using the English language. He told me that they were  |
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Esquire Deposition Services 1-800-944-9454

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| 2  | CERTIFICATE  |   |
| 3  | STATE OF NEW YORK)   |   |
| 4  | : S\$  |   |
| 5  | COUNTY OF NEW YORK)  | • |
| 6  | I Joon Horie o Doubtered   |   |
| 8  | I, Joan Urzia, a Registered Professional Reporter and Notary     |   |
| 9  | Public within and for the State of New York,                     |   |
| 10   | do hereby certify:   |   |
| 11   | That MAUREEN O'GARA, the   |   |
| 12   | witness whose deposition is hereinbefore set                     |   |
| 13   | forth, was duly sworn by me and that such                        | · |
| 14   | deposition is a true record of the testimony                     |   |
| 15   | given by the witness.  |   |
| 16   | I further certify that I am                                      |   |
| 17   | not related to any of the parties to this                        |   |
| 18   | action by blood or marriage, and that I am                       |   |
| 19   | in no way interested in the outcome of this                      |   |
| 20   | matter.  |   |
| 21<br>22   | IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of |   |
| 23   | March 2007.  |   |
| 24   | THE LOND .   |   |
| 25   | JOAN URZIA   |   |
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| 2<br>3   | INDEX OF EXAMINATION   |   |
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| 2<br>3<br>4<br>5<br>6<br>7                                   | INDEX OF EXAMINATION  WITNESS PAGE MAUREEN O'GARA                |   |
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