1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

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5 UNITED STATES OF AMERICA,)
)
6 Plaintiff,)
)
7 vs.) No. CIV 98-1232(TPJ)
)
8 MICROSOFT CORPORATION,)
) CONFIDENTIAL
9 Defendant.)
)
10 _____)

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ANTITRUST DIVISION
SAN FRANCISCO OFFICE

13 DEPOSITION OF BILL GATES

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22 REPORTED BY:
Kathleen E. Barney,
CSR No. 5698

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24 Katherine Gale
CSR No. 9793

25 Our File No. 1-49005

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14 Q. BY MR. HOUCK: I'd like you to look at
15 Trial Ex. 336 ~~Exhibit I~~, Mr. Gates, right here in front of you.
16 This is a memorandum that purports to be from you to
17 your executive staff dated May 22, 1996, and it
18 attaches, for want of a better word, an essay
19 entitled "The Internet PC" dated April 10, 1996.
20 Do you recall writing that essay?
21 A. It looks like this is an e-mail, not a
22 memorandum.
23 Q. Do you recall writing the essay dated
24 April 10, 1996 entitled "The Internet PC"?
25 A. Well, it looks like an essay I wrote.

1 I don't remember specifically, but it does look like
2 something I wrote.
3 Q. The portion I refer you to is at the
4 bottom of the first page under the heading called
5 "The Latest Killer App." Do you see that?
6 A. I see a heading.
7 Q. First paragraph under that heading
8 reads as follows: "Our industry is always looking
9 for the next 'killer application'-- for a category of
10 software that, by its utility and intelligent design,
11 becomes indispensable to millions of people. Word
12 processors and spreadsheets were the killer
13 applications for business PCs starting in 1981."
14 And the next sentence reads, "The
15 latest confirmed 'killer app' is the web browser."
16 Do you recall writing that, sir?
17 A. No.
18 Q. Do you have any reason to believe you
19 didn't write it?
20 A. No.
21 Q. Can you explain what you meant here by
22 describing the Web browser as a "killer app"?
23 A. I just meant that browsing would be, in
24 our view, a popular thing, not necessarily on the Web
25 but just browsing in general would be a popular

1 activity.

2 Q. Is a killer application an application

3 that drives sales of other products like operating

4 systems and hardware?

5 A. No.

6 Q. Do you have a definition in your own

7 mind of killer application?

8 A. It means a popular application.

9 Q. Let me resort again to the Microsoft

10 computer dictionary, and I'll read you what that says

11 about killer applications. You may disagree with it,

12 and if so, you can tell me.

13 The Microsoft computer dictionary, 1997

14 edition, defines killer app as follows, and it gives

15 two definitions. And I'll be very complete this

16 time, Mr. Gates.

17 The first definition is, "An

18 application of such popularity and widespread

19 standardization that fuels sales of the hardware

20 platform or operating system for which it was

21 written."

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Q. The second definition is, "An application that supplants its competition."

1 Let me go back and read you the first
2 definition again, now that you've heard both of them.
3 The first definition reads as follows:
4 "An application of such popularity and widespread
5 standardization that fuels sales of the hardware
6 platform or operating system for which it was
7 written."
8 A. I already told you that my definition
9 of killer app is a very popular application.
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21 Q. What about a relationship to an
22 operating system?
23 A. Usually they're just talking about it
24 being a very popular application. I certainly know
25 of things that have been referred to as killer

1 applications that haven't driven hardware sales or
2 operating system sales.
3 Q. What other applications would you
4 identify as being killer applications?
5 A. Applied simulator.
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20 Q. Does Microsoft endeavor to track its
21 market share with respect to operating systems on
22 personal computers?
23 A. There's not some unified effort to do
24 that.
25 Q. Is there anybody in Microsoft

responsible for trying to determine what Microsoft's market share is with respect to PC operating systems?

A. No.

Q. Have you seen any igures indicating what Microsoft's market share is with respect to operating systems on personal computers?

A. From time to time people doing marketing analysis may pull together some figures like that. And depending on, you know, what the context is, they will be different numbers.

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17 Q. I'd like you to turn to the page of
18 this document that ends in 022. And the heading
19 reads "x86 OS Analysis for Fiscal Year '96."
20 A. Okay.
21 Q. On the page that is titled "x86 OS
22 Analysis for Fiscal Year '96" appears a statement,
23 "All other competitive licenses, less than 5%"
24 Do you have any understanding that in
25 or about early 1996 Microsoft's share of the market

1 with respect to operating systems sold for x86
2 computers was in the vicinity of 95 percent?
3 A. No.
4 Q. What is your understanding of what the
5 Microsoft market share was at that time?
6 A. I wouldn't know.
7 Q. Do you have any idea, as you sit here
8 today, what Microsoft's market share is with respect
9 to operating systems sold for x86 architecture
10 computers?
11 A. Well, piracy alone is greater than 5
12 percent. But no, I don't know the number.
13 Q. What other companies besides Microsoft
14 sell operating systems for x86 architecture
15 computers?
16 A. There's a great number.
17 Q. Can you identify them?
18 A. Santa Cruz. Red Brick. Caldera. IBM
19 in many different products. Sun Microsystems.
20 Microware. Wind River.
21 Those are all I can think of right now.
22 Q. Do you have any estimate as to what the
23 collective market share of those companies is with
24 respect to operating systems sold for x86
25 architecture PCs?

1 A. No.

2 Q. Is it under 10 percent?

3 A. Well, I've said to you I don't know the

4 numbers.

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20 Q. BY MR. HOUCK: Would you take a look at
NOT A TRIAL EX
21 Exhibit 339, Mr. Gates. Exhibit 339 contains a
22 number of e-mails, and I want to ask you a couple
23 questions about one on the first page from Russell
24 Siegelman to yourself and others re MCI as an access
25 provider dated October 13, 1994.

1 Do you recall receiving this e-mail?
2 A. No.
3 Q. Do you have any reason to believe you
4 didn't get it?
5 A. No.
6 Q. What was Mr. Siegelman's position in
7 October of '94?
8 A. He was involved with looking at Marvel.
9 Q. And what was Marvel?
10 A. It was a code name for what we would do
11 in terms of Internet sites or online service
12 activity.
13 Q. Do you understand that in this e-mail
14 here Mr. Siegelman is opposing a proposal to give MCI
15 a position on the Windows 95 desktop as an Internet
16 service provider?
17 A. I don't remember anything about MCI.
18 This talks about how we'll have a Mosaic client in
19 Windows 95. I don't see anything in here about the
20 desktop.
21 Q. It references in this e-mail the
22 Windows box. What do you understand the Windows box
23 to mean?
24 A. Well, the Windows box is certainly not
25 the Windows desktop. The Windows box is a piece of

1 cardboard.

2 Q. Is it your understanding that when he

3 uses "Windows box" here, he means a piece of

4 cardboard?

5 A. Well, he is probably talking about the

6 stuff that's inside. He is saying access to the

7 Windows box. He is talking about the bits that are

8 on the --

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21 (Record read.)

22 THE WITNESS: This is electronic mail

23 and Russ is suggesting that he disagrees with doing a

24 deal with MCI under these particular terms.

25 Q. BY MR. HOUCK: In the e-mail he refers

1 to Windows distribution as a unique and valuable
2 asset, more specifically as "our one unique and
3 valuable asset." Do you see that?
4 A. I see a sentence that has those words
5 in it.
6 Q. Do you have an understanding as to what
7 he meant?
8 A. Well, the Marvel people were having a
9 hard time coming up with a strategy, and in
10 retrospect we can look back and say they didn't come
11 up with a good strategy. And they were looking at,
12 you know, what could they do that would be attractive
13 to a lot of users. And sometimes their goals and the
14 goals of the Windows group were different. And in
15 retrospect it's clear they weren't able to attract a
16 lot of users.
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25 Do you have any understanding as to

1 what Mr. Siegelman meant here by his reference to
2 Windows distribution being "our one unique and
3 valuable asset"?
4 A. Was that the question I was asked --
5 Q. Yes, sir.
6 A. Can you read me back the previous
7 question?
8 (The record was read as follows:
9 "Q. In the e-mail he refers to Windows
10 distribution as a unique and valuable asset,
11 more specifically as 'our one unique and
12 valuable asset.' Do you see that?
13 "A. I see a sentence that has those
14 words in it.
15 "Q. Do you have an understanding as to
16 what he meant?"
17 THE WITNESS: Well, maybe there is some
18 understanding -- you said do I understand what he
19 meant. I thought you were asking about his e-mail as
20 a whole.
21 Q. BY MR. HOUCK: Let me reask it for the
22 third time and see if I can get an answer.
23 Do you have any understanding what
24 Mr. Siegelman meant when he referred to Windows
25 distribution as our one unique and valuable asset?

1 MR. HEINER: This is a line of
2 questioning about the mail that Mr. Gates does not
3 recall reading; is that right?
4 MR. HOUCK: The question has been put.
5 THE WITNESS: I think the Marvel group
6 in their search for what they could do to get
7 millions of users at this particular point in time
8 was thinking about making it easy to sign up to the
9 Windows box being something that would be helpful to
10 them and therefore an asset for the Marvel group in
11 what they were doing.
12 Q. BY MR. HOUCK: Do you understand that
13 Mr. Siegelman in his reference had in mind the large
14 market share that Microsoft has with respect to
15 operating systems?
16 A. I don't see anything about that in
17 here.
18 Q. That's not your understanding?
19 A. Remember, Russ isn't involved with the
20 Windows business, he is involved with the Marvel
21 business.
22 Q. Do you consider Windows distribution a
23 unique asset of Microsoft?
24 A. I know that the inclusion of what
25 Marvel became didn't lead to its being popular.

1 Q. Again, let me ask the question,
2 Mr. Gates. I wasn't asking about Marvel. I was
3 asking about Windows distribution.
4 A. Well, Marvel was a thing that was put
5 into the Windows box and so, in fact, if the question
6 is is putting things in there, is that valuable in
7 the sense that it creates popularity for those
8 things, there are many good examples that we know
9 where it obviously does not create popularity. So in
10 terms of how much of a value that is, it's very
11 instructive to look at Marvel and what subsequently
12 happened to that because we did include it in the
13 Windows box as one of the things that the user had on
14 the desktop.
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21 Q. BY MR. HOUCK: Let me put the question
22 again without reference to this document. Mr. Gates,
23 do you believe that Windows distribution is a unique
24 asset that Microsoft has?
25 MR. HEINER: Objection. Form.

1 Foundation. Defined terms.

2 THE WITNESS: What do you mean when you

3 say "Windows distribution" there?

4 Q. BY MR. HOUCK: Do you have an

5 understanding what Mr. Siegelman meant by the phrase

6 "Windows distribution" in his e-mail that he wrote to

7 you?

8 A. He means -- I think he means, I don't

9 know for sure, I think he means including an icon on

10 the desktop for access to Marvel.

11 Q. And by "the desktop," you mean the

12 Windows desktop?

13 A. In this case, yes.

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18 Q In 1996 was there a common
19 understanding of what was meant by "Internet
20 software"?
21 A In a context-free sense, absolutely
22 not.
23 Q Was there a common understanding of
24 what was meant by an Internet browser?
25 A The whole notion of what the browser --

1 what features it would contain or what it would mean
2 or all that was very uncertain in 1996.
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7 Q. Good morning, Mr. Gates.
8 Are you going to be a witness at the
9 trial of this matter?
10 MR. HEINER: Objection.
11 THE WITNESS: I don't know.
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24 Q. BY MR. BOIES: Do you intend to be a
25 witness at trial?

A. I don't know.

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7 Q. Good morning, Mr. Gates. Do you
8 understand that you are still under oath?
9 A. Yes.
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20 Q. Let me ask you to look next at a
21 document marked ~~Exhibit 388~~ TRIAL EX. 520. The second e-mail or
22 message here is a message dated April 12, 1995 at
23 12:54 p.m. from Paul Maritz to you and a number of
24 other people; correct, sir?
25 A. That's what it appears to be.

1 (The document referred to was marked
2 by the court reporter as ~~Government Exhibit 308~~ TRIAL EX. 520 for
3 identification and is attached hereto.)
4 Q. BY MR. BOIES: And the subject is the
5 "3 year plan thoughts - draft;" correct?
6 A. That's, yes, the subject.
7 Q. Did you receive this message on or
8 about April 12, 1995?
9 A. I don't remember receiving it, but I
10 have no reason to doubt that I did.
11 Q. Now, attached here is something that is
12 titled "3 year plan follow-up (draft)." Do you see
13 that?
14 A. Yes.
15 Q. Did you receive this at or about the
16 time indicated of April 12, 1995?
17 A. I'm not sure.
18 Q. Let me ask you to look at the page that
19 bears in the bottom right-hand corner the Microsoft
20 document production stamp ending 7193. And in
21 particular the portion that is under the heading
22 "Shell/Browser." Do you have that?
23 A. Yes.
24 Q. And it says here, "We should get a view
25 as to what will be handled by the 'Win97' Shell, and

1 what will not - and if not, how is the needed
2 extension integrated into the Win97 environment."
3 Do you see that?
4 A. Uh-huh.
5 Q. Were you told in or about April of 1995
6 that one of the issues in terms of planning that was
7 needed to be decided was what would be handled by the
8 Win97 shell and what would not be?
9 A. I'm not sure -- I'm not sure what is
10 meant by Win97 shell here. I don't remember seeing
11 that at the time.
12 Q. Well, you know what a shell is in this
13 context, do you not, sir?
14 A. Yes.
15 Q. And you recognize Win97 as a reference
16 to what ultimately became Windows 98, do you not,
17 sir?
18 A. No. The fact that we use a name like
19 that before we have decided what's in a product
20 doesn't mean that when we used that name back then
21 it references what eventually got into the product.
22 Q. Let me make sure I understand that last
23 answer.
24 Was Win97 a reference that was used
25 within Microsoft to refer to what ultimately became

1 Windows 98?

2 A. It was a term that was used to refer to

3 a project. When it was used, none of us knew either

4 what would be in the project or what it would be

5 called. So any time you see that reference, you

6 can't assume it's a reference to the things that

7 eventually became Windows 98. All you know is

8 they're referring to the next project related to

9 enhancing Windows.

10 Q. Let me ask the question this way. Was

11 the project that was internally described within

12 Microsoft as Win97 the project that ultimately

13 resulted in Windows 98?

14 A. I believe so.

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14 Q. All right, sir. Let me ask you to look
15 at a document that has been marked as ~~Government~~
TRIAL EX. 333
16 ~~Exhibit 396~~. And this purports to be some questions
17 and answers on "The Use and Misuse of Technology" by
18 Bill Gates dated October 24, 1995, copyrighted 1992
19 to 1995 by the Microsoft Corporation.
20 (The document referred to was marked
TRIAL EX. 333
21 by the court reporter as ~~Government Exhibit 396~~ for
22 identification and is attached hereto.)
23 Q. BY MR. BOIES: Do you recall preparing
24 these questions and answers, sir?
25 A. I know I was at a meeting where this

1 was worked on.

2 Q. And did the statements set forth here

3 reflect your views at the time?

4 A. I don't remember specifically these

5 sentences, but I have no reason to doubt this is what

6 was discussed and put into the column.

7 Q. And you understood that when this was

8 prepared and, as you put it, put into the column,

9 that it was going to be published, did you not, sir?

10 A. Yeah, the column is published.

11 Q. Where is the column published?

12 A. A number of newspapers.

13 Q. Now, when you refer here on the second

14 page, fourth line, to "winning for Microsoft a larger

15 share of the market for Internet browsers," do you

16 see that?

17 A. No.

18 Q. It's on the second page, fourth line --

19 A. Oh, you're on the second page. Let me

20 just read this.

21 Okay, go ahead.

22 Q. When you refer in here to "winning for

23 Microsoft a larger share of the market for Internet

24 browsers," do you see where you say that?

25 A. Yes, it's part of a sentence here.

1 Q. What did you mean by "the market for
2 Internet browsers," sir?
3 A. I assume I meant usage share of
4 browsers on the World-Wide Web.
5 Q. You then go on in parens to say "An
6 Internet browser is software that lets an individual
7 roam the worlds of information available on the
8 Internet. Microsoft's browser is called the Internet
9 Explorer."
10 Do you see that?
11 A. Close paren. Yeah.
12 Q. Close paren and then close quote, since
13 I'm quoting it.
14 Did you believe that was an accurate
15 statement at the time that you made it and published
16 it?
17 A. In trying to give an explanation to the
18 broad audience that the column was aimed at, yes, I
19 thought it was a good way of describing it to that
20 audience.
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10 Q. Okay. Let me ask you to look at
11 TRIAL EX. 560 ~~Exhibit 401~~. This is a message from you to
12 Mr. Ballmer and Mr. Chase with a copy to Mr. Maritz
13 and some other people also given copies dated
14 August 15, 1997 at 4:07 p.m. on the subject of IBM
15 and Netscape; correct?
16 A. Uh-huh
17 (The document referred to was marked
18 by the court reporter as TRIAL EX. 560 ~~Government Exhibit 401~~ for
19 identification and is attached hereto.)
20 Q. BY MR. BOIES: And you type in here
21 "Importance: High."
22 A. No.
23 Q. No?
24 A. No, I didn't type that.
25 Q. Who typed in "High"?

1 A. A computer.
2 Q. A computer. Why did the computer type
3 in "High"?
4 A. It's an attribute of the e-mail.
5 Q. And who set the attribute of the
6 e-mail?
7 A. Usually the sender sends that
8 attribute.
9 Q. Who is the sender here, Mr. Gates?
10 A. In this case it appears I'm the
11 sender.
12 Q. Yes. And so you're the one who set the
13 high designation of importance, right, sir?
14 A. It appears I did that. I don't
15 remember doing that specifically.
16 Q. Right. Now, did you send this message
17 on or about August 15, 1997?
18 A. I don't remember doing so.
19 Q. Now, you say that you had a meeting
20 with Jeff Papows; is that correct?
21 A. I did have a meeting with Jeff Papows,
22 yes.
23 Q. And the third paragraph from the bottom
24 you write "He doesn't want anything attributed to me
25 or he will get in trouble, but he says we can just

1 refer to all the rumors on the Web about what kind of
2 deal is being done between Netscape and IBM."
3 Do you see that?
4 A. I do.
5 Q. At this point, that is, in or about
6 August of 1997, were you aware prior to your
7 conversation with Mr. Papows, that there was a
8 prospect of a deal between Netscape and IBM?
9 A. There had been rumors of that, so yes.
10 In fact, there had been deals. There was rumors of a
11 new deal.
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5 Q. BY MR. BOIES: This is a message dated
6 February 16, 1998, from Laura Jennings to you and a
7 number of other people, including Mr. Allchin,
8 Mr. Ballmer and Mr. Maritz.
9 Do you see that?
10 A. Yes.
11 (The document referred to was marked
12 by the court reporter as ~~Government Exhibit 403~~ TRIAL EX. 225 for
13 identification and is attached hereto.)
14 Q. BY MR. BOIES: Did you receive this
15 e-mail in or about February of 1998, sir?
16 A. I don't remember receiving it, but I
17 have no reason to think that I didn't.
18 Q. Let me take you down to the next to
19 last paragraph on the first page. The first sentence
20 says "One potential concern: Brad mentioned to me
21 late Friday that there may be new concerns about our
22 plan to make Start a requirement for being in the IE
23 referral server, or at least there may be timing
24 issues related to your appearance at Senator Hatch's
25 hearings."

1 Do you see that?

2 A. Yes.

3 Q. Do you recall a discussion of this in

4 or about February of 1998?

5 A. Not with Laura. But on the general

6 subject, yes.

7 Q. Did Microsoft in fact make Start

8 "a requirement for being in the IE referral server"?

9 A. No, I don't think we did.

10 Q. Why not?

11 A. I think the PR group thought it would

12 be controversial and we didn't see the benefit as

13 being worth having that controversy.

14 Q. Let me ask you to look at a document

15 that has been marked as ~~Exhibit 404~~ TRIAL Ex. 225. The first

16 message here is a message to you and Mr. Ballmer with

17 copies to other people dated March 23, 1994 at

18 9:13 a.m. on the subject of "IBM helps Lotus."

19 (The document referred to was marked

20 by the court reporter as ~~Government Exhibit 404~~ TRIAL Ex. 225 for

21 identification and is attached hereto.)

22 Q. BY MR. BOIES: Did you receive this

23 message in or about March of 1994, sir?

24 A. I don't know.

25 Q. The message begins by describing how

1 IBM is helping in the selling of Notes. Do you see
2 that?
3 A. Yes.
4 Q. And at the end Mr. Kempin, who is the
5 author of this, says "I am unsure if we need to see
6 this as an organizational issue or an OEM issue."
7 Do you know what he means by that?
8 A. What's he talking about?
9 Q. Do you know what he is talking about?
10 A. No.
11 Q. He then says "I am willing to do
12 whatever it takes to kick them out, but strongly
13 believe we need a WW hit team to attack IBM as a
14 large account, whereby the OEM relationship should be
15 used to apply some pressure."
16 Do you see that?
17 A. Uh-huh.
18 Q. You have to say yes for the record.
19 A. I see it.
20 Q. Do you know what Mr. Kempin means when
21 he writes to you about a "WW hit team"?
22 A. He means a salesperson.
23 Q. If he means a salesperson, why doesn't
24 he say salesperson, sir?
25 A. It clearly means salesperson.

1 Q. Are salespeople within Microsoft
2 commonly referred to as WW hit teams?
3 A. If they're world-wide and if they're
4 trying to sell to somebody who is a large account,
5 you bet.
6 Q. And when your salespeople go out to
7 sell large accounts, are they commonly referred to as
8 needing a "WW hit team to attack IBM as a large
9 account, whereby the OEM relationship should be used
10 to apply some pressure"?
11 A. No.
12 Q. Did you say no?
13 A. I said no.
14 Q. Do you remember Mr. Kempin telling you
15 in March of 1994 that he was proposing that the OEM
16 relationship with IBM should be used to apply some
17 pressure to stop IBM from promoting the sale of
18 Notes?
19 A. No.
20 Q. Do you recall anyone ever telling you
21 that, sir?
22 A. No.
23 Q. Did you ever respond to Mr. Kempin and
24 tell him that no, you didn't think that Microsoft
25 ought to apply OEM pressure to IBM?

1 A. I don't understand your question.
2 Q. Do you understand that Mr. Kempin is
3 here proposing to you that Microsoft apply OEM
4 pressure to IBM?
5 A. It doesn't say OEM pressure.
6 Q. I didn't say it said it, sir. It says
7 he is proposing that the OEM relationship should be
8 used to apply some pressure on IBM; correct, sir?
9 A. You're asking me to read it?
10 Q. I'm asking you if that's what you
11 understand him to be saying.
12 A. What?
13 Q. That he is proposing that the OEM
14 relationship should be used by Microsoft to apply
15 some pressure on IBM.
16 A. No, I don't think he is proposing
17 anything.
18 Q. You don't think he is proposing
19 anything. When he says that he strongly believes
20 that there needs to be a "WW hit team to attack IBM
21 as a large account, whereby the OEM relationship
22 should be used to apply some pressure," you don't
23 think that he is suggesting that Microsoft apply
24 pressure on IBM?
25 A. I don't think he is making a proposal.

1 It is one of the things he mentions, but it's not a
2 proposal.
3 Q. Now, Mr. Kempin's message was a
4 response to a message from you to Mr. Kempin and
5 Mr. Ballmer dated March 20, 1994 at 11:29 p.m.,
6 correct?
7 A. It appears to be, yes.
8 Q. And you write him in the first
9 paragraph "This is one topic I really want to try to
10 get to the bottom of. Why does IBM help Lotus so
11 much? Is there anything we can do about this?
12 Should it become an issue in our global relationship
13 with IBM?"
14 Did you send this message to Mr. Kempin
15 and Mr. Ballmer in March, 1994?
16 A. It appears I did. I mean that's part
17 of the message I sent, it appears.
18 Q. Now, when Mr. Kempin replied saying
19 "We need a WW hit team to attack IBM as a large
20 account, whereby the OEM relationship should be used
21 to apply some pressure," did you understand him to be
22 responding to your questions?
23 A. I don't remember receiving his mail.
24
25