

LAW OFFICES
HATCH, JAMES & DODGE

A PROFESSIONAL CORPORATION
 10 WEST BROADWAY, SUITE 400
 SALT LAKE CITY, UTAH 84101
 TELEPHONE: (801) 363-6363
 FACSIMILE: (801) 363-6666

FILED
 U.S. DISTRICT COURT
 2010 MAR 12 A 7:21
 bhatch@hjdllaw.com

BRENT O. HATCH

March 11, 2010

Hand Delivered

Honorable Ted Stewart
 U.S. District Court Judge
 350 S. Main St.
 Salt Lake City, Utah 84101

Re: Maureen O'Gara deposition designations

Your Honor:

We object to the enumerated designations from Ms. O'Gara's testimony on the grounds that they are unnecessarily cumulative, they are significantly more prejudicial than probative, and they create undue potential for outside sources and commentary to prejudice the jury.

As an initial matter, the designations are cumulative. Novell seeks to undermine the credibility of Ms. O'Gara, a longstanding reporter in the technology field, by showing that she communicated with Blake Stowell, who was SCO's director of press relations for a period of time. The parties have agreed that Novell is permitted to designate testimony that clearly demonstrates such communications. (See 29:13-19; 33:6-24; 37:8-38:25.) The designations at issue here serve merely to make the same point, and thus are not necessary.

The designations are also significantly more prejudicial than probative. In the first designation at issue (39:2-19), Ms. O'Gara is asked about the content of an e-mail that she forwarded to Mr. Stowell. In the e-mail, one of Ms. O'Gara's readers claims that she "take[s] SCO's side like Hillary took Bill Clinton's side when he was being accused of fooling around with Monica." The reader's view is irrelevant and hearsay, and the reference to the Clintons has no place in this trial. In addition, the testimony that precedes these references is coming in. The disputed testimony adds nothing.

In the second designation at issue (47:3-48:25), Novell seeks to designate testimony concerning an e-mail between Mr. Stowell and Ms. O'Gara in which Novell's counsel asks Ms. O'Gara about the source of humor in e-mails between herself and Mr. Stowell. In seeking to explain the humor in the exchange, Ms. O'Gara explains that Mr. Stowell is "a Mormon," which she explains as referring to "those kinds of family values that we're all supposed to admire so much." This humorous exchange has nothing to do with any substantive issue in this case, and Ms. O'Gara's use of the word "Mormon" and the associated reference has the potential for extreme prejudice in this jurisdiction -- one way or the other. The potential for undue prejudice from this e-mail far outweighs any small, cumulative probative value to the fact of the exchange between Mr. Stowell and Ms. O'Gara.

In the lengthy, third set of designations at issue (64:10-65:3; 66:9-12, 66:17-67:13; 67:23-69:24), Novell's counsel points to an e-mail exchange between Mr. Stowell and Ms. O'Gara concerning the anti-SCO website Groklaw.com and the fact that she wrote an article about the website concerning the individual who purportedly started and was maintaining the website. The testimony is cumulative on the issue of the fact of e-mail exchanges between Mr. Stowell and Ms. O'Gara and contains no discussion of any substantive issue in the case. To the contrary, the discussion about Groklaw has the potential for extreme prejudice. At the beginning of the trial, counsel for SCO argued that "[w]e don't think we need to mention the name of Groklaw or something like that to make any arguments that relevant in this trial," and the Court stated: "I would agree. I do want there to be no temptation for these jurors to be doing research on their own. . . . I do not want to do anything that would make it any easier for a juror in a three-week trial becoming really interested and trying to find out something on their own." (February 25, 2010, Pretrial Conference Hearing Transcript at 57.) The Court then instructed both sides to tell their witnesses not to refer to such websites by name. (*Id.* at 58.)

The references in the designations both to Groklaw and to the question of who really operates the website creates undue temptation for jurors to pursue their own research on the issue. That would contaminate the proceedings and would decimate any prospect of impartiality in any such juror's mind.

SCO respectfully submits, for all of these reasons, that the Court should exclude the testimony at issue.

Sincerely yours,



Brent O. Hatch

encl.

c: Michael Jacobs (via email)

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

THE SCO GROUP, INC., a Delaware Corporation,

Plaintiff,

vs. 2:04CV00139

NOVELL, INC., a Delaware Corporation.

Defendant.

VIDEOTAPED DEPOSITION OF MAUREEN O'GARA

Friday, March 23, 2007

11:00 a.m.

Reported by:

Joan Urzia, RPR

JOB NO. 192768

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1 O'Gara
 2 2003, Exhibit 1080.
 3 **A Yes.**
 4 Q It looks to me that the way you
 5 reported it, to use the terminology you and
 6 I have started to adopt here --
 7 **A Yes.**
 8 Q -- you reported one and two, but
 9 not causality?
 10 **A Right.**
 11 Q Do you agree with that?
 12 **A Yes.**
 13 Q Why is that?
 14 **A I didn't know what to do with**
 15 **it, quite frankly, and the story wasn't**
 16 **about -- from my point of view the story**
 17 **wasn't about that.**
 18 Q And why is that?
 19 **A Because I'm not a lawyer.**
 20 Q You saw no news value in a
 21 statement to you by a Novell executive that
 22 conveyed to you that the reason Novell was
 23 releasing its statement on a particular
 24 date was because SCO was reporting its
 25 quarterly results that same date?

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1 O'Gara
 2 **A I know that that seems in**
 3 **isolation like that should be really**
 4 **important, okay, but there were so many**
 5 **issues in this very complicated matter that**
 6 **that would make a great sidebar or a**
 7 **follow-up maybe, but we were talking about**
 8 **something else in this story and I**
 9 **thought -- I didn't know where it was all**
 10 **going to go, and I've known Chris a long**
 11 **time. Sometimes I get protective.**
 12 Q Did you subsequently convey to
 13 someone at SCO that you had heard from
 14 Chris Stone that the reason Novell had
 15 issued its statement that day was because
 16 SCO -- was to time it with the earnings
 17 announcement?
 18 **A As far as I remember, and**
 19 **according to the evidence in front of me**
 20 **here, we were breaking this news. Okay?**
 21 In the normal course of
 22 reporting, I went back to the other guy,
 23 being SCO, who as far as I know didn't know
 24 anything about this, for a statement.
 25 During the course of my asking

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1 O'Gara
 2 **for that statement from its public**
 3 **relations people, as a lever to get that**
 4 **statement I repeated what Stone had said**
 5 **to me.**
 6 Q What exactly did you state when
 7 you repeated what Stone had said to you?
 8 **A Whatever his exact words were at**
 9 **the time. I'm sorry.**
 10 Q Were you reading from notes?
 11 **A I don't think you had to because**
 12 **it was just a sentence.**
 13 Q Your best recollection is you
 14 had no notes?
 15 **A No, I have notes, but you know,**
 16 **they're not understandable, they're not**
 17 **notes like full sentences, they're not**
 18 **verbatim everything. If I took shorthand,**
 19 **you'd be handy to have around.**
 20 Q Do you have those shorthand
 21 notes still?
 22 **A No, I don't do shorthand.**
 23 Q I used the word inadvisably.
 24 You're being more precise than I am.
 25 **A Yes, yes.**

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1 O'Gara
 2 Q Do you have the notes of the
 3 short phrases still?
 4 **A No.**
 5 Q What is your practice of the
 6 short phrases, if you will, in terms of
 7 whether you keep them or not?
 8 **A I throw everything out.**
 9 Q When do you do that?
 10 **A If not when the story is**
 11 **written, then every week, and I've been**
 12 **doing that since 1972**
 13 Q When you conferred with the
 14 public relations people at SCO, first of
 15 all, were you conferring with Blake
 16 Stowell?
 17 **A Confering? I don't confer with**
 18 **the PR people. I called Blake Stowell,**
 19 **yes**
 20 Q What did you mean, why did you
 21 object to the word confer?
 22 **A I find it difficult to use that**
 23 **verb, when I'm talking about a flak, no.**
 24 **You don't have conferences with PR people.**
 25 Q You called him up, you told

Accepted

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1 O'Gara
 2 him --
 3 **A From the same phone I talked to**
 4 **Chris on.**
 5 Q You told him what Chris had said
 6 to you and you asked him whether he had any
 7 comment?
 8 **A No. I told, I said to them what**
 9 **I knew, which is the substance of this**
 10 **story, that the next day that they were**
 11 **going to issue this cease and desist**
 12 **letter, and in order to get a statement**
 13 **from SCO as a lever, I threw in what Chris**
 14 **had said. It wasn't as scandalous to me as**
 15 **a regular business reporter than it has**
 16 **become under these circumstances. Do you**
 17 **understand what I mean?**
 18 Q I'm trying to figure out which
 19 of the -- I think setting aside the
 20 chortling for a minute, we've talked about
 21 three components again, the fact of the
 22 date of the planned issuance of the Novell
 23 statement, the fact of the date of the SCO
 24 earnings release and the causal
 25 relationship between one and two.

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1 O'Gara
 2 **A Uh-huh.**
 3 Q And I'm trying to figure out if
 4 you told SCO one, one and two, or one two
 5 and three.
 6 **A If I remember my one, two and**
 7 **three correctly, the answer is one, two and**
 8 **three.**
 9 Q So then I'll say that in more
 10 colloquial terms, you conveyed to Blake
 11 Stowell that Chris Stone had said to you --
 12 **A Did I do something with your**
 13 **wire? Excuse me. Sorry. I moved.**
 14 Q You conveyed to Blake Stowell
 15 that Chris Stone had said to you that
 16 Novell was issuing its statement in order
 17 to time its release with SCO's report of
 18 its earnings?
 19 **A Among the many things -- the**
 20 **substance of the statement seemed to take**
 21 **priority under these, in my world the**
 22 **substance of the statement was the primary**
 23 **fact. I was trying to get a reaction to**
 24 **that.**
 25 **Then when I noticed hesitancy on**

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1 O'Gara
 2 **the part of Mr. Stowell to give me a**
 3 **reaction to that, I pushed further and used**
 4 **the expressions that Stone had said to me,**
 5 **and the substance of which is that the**
 6 **reason that they were doing it tomorrow was**
 7 **because you're going to have your earnings**
 8 **call.**
 9 Q And you're confident as you sit
 10 here today, it's 4 years later, that you
 11 didn't embellish on what Mr. Stone had said
 12 to you?
 13 **A No.**
 14 Q In order to elicit comment from
 15 Mr. Stowell?
 16 **A No, absolutely not.**
 17 Q You're not confident, or you're
 18 confident you did not?
 19 **A I am absolutely confident that I**
 20 **did not. That would be a lie.**
 21 Q Would you regard that as a
 22 breach of your ethics as a journalist?
 23 **A Absolutely.**
 24 Q It's sort of like
 25 cross-examining a witness when you don't

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1 O'Gara
 2 have a basis for the cross-examination?
 3 **A Yeah, you guys can do it, but I**
 4 **can't.**
 5 Q We can't either.
 6 So with that in mind, how would
 7 you describe your relationship with
 8 Mr. Stowell?
 9 **A As normal.**
 10 Q What does normal mean to you?
 11 **A All press agents are wary of**
 12 **somebody like me. So it's like constantly,**
 13 **it's like cats, you know, or dogs sniffing**
 14 **each other out constantly. You might know**
 15 **that dog, but you know, you're not**
 16 **absolutely, you're never friends with**
 17 **that -- you know, you don't have friends,**
 18 **journalists don't have friends, but you**
 19 **have people that you deal with all the**
 20 **time.**
 21 Q Did you have the impression that
 22 Mr. Stowell regarded you as an ally in the
 23 SCO --
 24 **A Never, no.**
 25 Q Did you convey to Mr. Stowell at

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1 O'Gara
 2 any time that you took -- let me start over
 3 again.
 4 How did you view the SCO versus
 5 IBM SCO versus Novell dispute as it was
 6 brewing in the spring and summer of 2003?
 7 **A As a good story.**
 8 Q Did you believe that you were
 9 taking a particular side in that story?
 10 **A I have no side.**
 11 Q Did you understand that people
 12 thought you were taking sides during that
 13 period?
 14 **A I think that my stories stand**
 15 **for that. I think that -- I would refer**
 16 **you to my stories. I don't see any bias in**
 17 **any of my stories. It's just a completely**
 18 **objective recitation of the facts.**
 19 Q So my question, though, is do
 20 you think that there were, didn't you in
 21 fact -- and I promise you I won't ask you a
 22 question unless I have a basis for it --
 23 didn't you, in fact, receive communications
 24 from people who thought you were taking
 25 SCO's side in the dispute?

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1 O'Gara
 2 **A If I were to say that most**
 3 **people can't read, would you understand**
 4 **what I was talking about?**
 5 Q I'm not asking you to defend
 6 yourself at this point.
 7 **A I understand that.**
 8 Q I'm asking you whether, in fact,
 9 you received those communications.
 10 **A When? What's the timing?**
 11 Q Well, let me -- I was telling
 12 Mauricio, again, I have a rule against
 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.
 16 MR. JACOBS: We have another
 17 deposition going on today with
 18 Mr. Levine, so what I propose to do is
 19 to skip to 90.
 20 MR. GONZALEZ: Okay.
 21 MR. JACOBS: And we'll mark this
 22 as 90.
 23 MR. GONZALEZ: You mean 1090.
 24 MR. JACOBS: No, 90. We have a
 25 different numbering. Let's mark it

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1 O'Gara
 2 190.
 3 (Whereupon, Exhibit 190 was
 4 marked for Identification.)
 5 MR. JACOBS: 190 is an e-mail
 6 string with the date on the top of
 7 July 20, 2004. So it's after the
 8 period you and I were talking about
 9 before. It's produced by SCO at
 10 1648756 to 759.
 11 **A Yeah. So?**
 12 Q So this is a string of messages
 13 that you forwarded to SCO, correct?
 14 **A I don't, I don't know.**
 15 Q Well, do you see the e-mail at
 16 the bottom of 756 from O'Gara to Blake
 17 Stowell?
 18 **A I see from Frank somebody or**
 19 **another to O'Gara.**
 20 Q And look at the bottom of the
 21 first page.
 22 **A Then I see -- the bottom of the**
 23 **first --**
 24 Q The string is in reverse order.
 25 **A Yeah, I see. I don't know what**

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1 O'Gara
 2 **the context is.**
 3 MS. FOLEY: Just actually listen
 4 to the question that he asked.
 5 THE WITNESS: Sorry.
 6 MS. FOLEY: The question again
 7 was?
 8 Q You forwarded an e-mail string
 9 that you received to Mr. Stowell at SCO,
 10 correct?
 11 **A No.**
 12 MS. FOLEY: The question is does
 13 the document reflect that.
 14 **A I guess so.**
 15 Q Well, you don't have a
 16 recollection?
 17 **A I don't remember it, you know, I**
 18 **get lots of e-mails. So what?**
 19 Q Well, I guess my question is so
 20 what, why did you forward this string of
 21 e-mails from Frank Jalics, J-A-L-I-C-S, in
 22 which he accused you of being on, in a
 23 nutshell, on SCO's side --
 24 **A Yeah.**
 25 Q -- why did you forward that to

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1 O'Gara
 2 SCO under an e-mail "I want war pay"?
 3 MR. GONZALEZ: Objection.
 4 **A I don't remember the context of**
 5 **the thing, but --**
 6 MS. FOLEY: Do you remember why
 7 you forwarded it?
 8 THE WITNESS: No.
 9 Q Does it strike you as peculiar
 10 that a journalist would forward to one of
 11 the sides in a dispute a string of e-mails
 12 she got from a reader?
 13 **A I don't know what the right**
 14 **answer to that question is because I don't**
 15 **know the context.**
 16 Q Well, what's the context here?
 17 **A I'm probably just complaining**
 18 **about getting this kind of crap all, you**
 19 **know, all the time.**
 20 **People who can't read and don't**
 21 **know what the heck is going on and got it**
 22 **wrong to begin with just, you know, saying**
 23 **that, you know, you think you've got it**
 24 **tough, Blake, you should see it from my**
 25 **side. That's no big deal.**

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1 O'Gara
 2 **yes.**
 3 Q And it reads, "SCO needs AIX and
 4 DYNEX because it is charging IBM with
 5 copying AIX and DYNEX line for line into
 6 Linux. It is not charging IBM with copying
 7 UNIX line for line into Linux. It is
 8 charging IBM with copying derivative copy
 9 line for line into Linux.
 10 Do you see that?
 11 **A Yes.**
 12 Q So you were trying to clarify
 13 for him what you understood the dispute was
 14 about?
 15 **A Isn't that what the dispute was**
 16 **about at that time?**
 17 Q I'm not challenging that.
 18 **A Okay.**
 19 Q I'm just characterizing what you
 20 were doing.
 21 **A Right, okay.**
 22 Q And then he goes on and again
 23 sort of disputes your reporting on the case
 24 in his July 20th e-mail, do you see that?
 25 He says, "What makes you want to

Page 39

1 O'Gara
 2 Q So Jalics says to you in the
 3 July 19th e-mail --
 4 **A July 19, is that the beginning?**
 5 Q It's towards the beginning, yes.
 6 It's on the bottom half of 758.
 7 **A July 19th, wait a second. Yeah.**
 8 **About being Hillary to their Bill Clinton?**
 9 Q Yes. To be precise, he says,
 10 "You take SCO's side like Hillary took Bill
 11 Clinton's side when he was being accused of
 12 fooling around with Monica."
 13 Do you see that?
 14 **A Yes.**
 15 Q And then he goes on to explain
 16 why he thinks you are being taken in by
 17 SCO's story.
 18 Do you see that?
 19 **A Yes.**
 20 Q And then you responded to him
 21 with a clarification of what you thought
 22 SCO was alleging in the dispute.
 23 Do you see that?
 24 **A I don't think what they're**
 25 **alleging -- all right. I see my reply,**

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1 O'Gara
 2 believe SCO when every time they show up to
 3 a different court or to the same court on a
 4 different day their story keeps changing?
 5 When they filed the suits in the IBM case,
 6 did you know it was primarily a contract
 7 dispute and not really about contract
 8 copyright infringement? When they filed
 9 the suit against Auto Zone, did you realize
 10 that it was really about them thinking that
 11 Auto Zone might have ported some static
 12 libraries to Linux? SCO hired some
 13 competent lawyers that they are able to
 14 convincingly argue that the moon is made of
 15 green cheese, but that doesn't mean that
 16 they have the evidence to back it up,
 17 Frank."
 18 Do you see that?
 19 **A Uh-huh.**
 20 MR. GONZALEZ: Objection to the
 21 scope.
 22 Q And then you forward that string
 23 to Mr. Stowell and with what I took to be
 24 kind of a humorous remark, I want war pay.
 25 **A Right.**

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1 O'Gara
 2 any time that you took -- let me start over
 3 again.
 4 How did you view the SCO versus
 5 IBM SCO versus Novell dispute as it was
 6 brewing in the spring and summer of 2003?
 7 **A As a good story.**
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 13 period?
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 17 **any of my stories. It's just a completely**
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 24 from people who thought you were taking
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 13 the document reflect that.
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 16 recollection?
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 21 e-mails from Frank Jalics, J-A-L-I-C-S, in
 22 which he accused you of being on, in a
 23 nutshell, on SCO's side --
 24 **A Yeah.**
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Contested

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 16 Q Well, what's the context here?
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 18 **about getting this kind of crap all, you**
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 15 **A Isn't that what the dispute was**
 16 **about at that time?**
 17 Q I'm not challenging that.
 18 **A Okay.**
 19 Q I'm just characterizing what you
 20 were doing.
 21 **A Right, okay.**
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 23 sort of disputes your reporting on the case
 24 in his July 20th e-mail, do you see that?
 25 He says, "What makes you want to

Contested

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1 O'Gara
 2 Q So Jalics says to you in the
 3 July 19th e-mail --
 4 **A July 19, is that the beginning?**
 5 Q It's towards the beginning, yes.
 6 It's on the bottom half of 758.
 7 **A July 19th, wait a second. Yeah,**
 8 **About being Hillary to their Bill Clinton?**
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 10 "You take SCO's side like Hillary took Bill
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 21 with a clarification of what you thought
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 23 Do you see that?
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 13 competent lawyers that they are able to
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 15 green cheese, but that doesn't mean that
 16 they have the evidence to back it up,
 17 Frank."
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 19 **A Uh-huh.**
 20 MR. GONZALEZ: Objection to the
 21 scope.
 22 Q And then you forward that string
 23 to Mr. Stowell and with what I took to be
 24 kind of a humorous remark, I want war pay.
 25 **A Right.**

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1 O'Gara
 2 part of the deposition. This one I'm going
 3 to show you about is back to October 2004.
 4 So this will be 192. Do you have it?
 5 **A No, I don't.**
 6 **(Whereupon, Exhibit 192 was**
 7 **marked for identification.)**
 8 MR. JACOBS: Why don't you hold
 9 192 and we'll mark another one as 193.
 10 **(Whereupon, Exhibit 193 was**
 11 **marked for identification.)**
 12 Q So 193 is an e-mail string that
 13 ends on August 11, 2003 produced by SCO
 14 under 143593 to 595.
 15 **A Yeah.**
 16 Q And 192 is an e-mail string
 17 ending October 22, 2004 ending under SCO
 18 1648173 to 176. Let me ask you about 193
 19 first.
 20 MS. FOLEY: Have you had a
 21 chance to look at it, 193?
 22 **A I'm sorry, I'm looking here --**
 23 **oh, I'm sorry, I'll looking at 192.**
 24 Q That's all right. Take a look
 25 at 193 now.

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1 O'Gara
 2 **A Yes.**
 3 Q So 193 is an e-mail string
 4 between you and Stowell about a couple of
 5 issues, but what I want to focus attention
 6 on is the most recent two e-mails in the
 7 string. It seems to me you're joking with
 8 him about the subscription costs to Linux
 9 Graham and you say I'll make you a special
 10 price.
 11 Do you see that?
 12 **A Uh-huh.**
 13 Q And that's on August 11, 2003,
 14 do you see that?
 15 **A Uh-huh.**
 16 Q And then you again, I think in
 17 humor -- I'll accept it as in humor -- you
 18 say "you're so cute" and then you say "and
 19 your politics are sensible and should be
 20 rewarded." I didn't see the humor in that.
 21 I was wondering what you meant by it.
 22 **A He's a mormon.**
 23 Q And therefore?
 24 **A It has a tendency to have like,**
 25 **you know, those kindS of family values that**

Contested

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1 O'Gara
 2 **we're all supposed to admire so much.**
 3 Q And that's what you meant by
 4 politics?
 5 **A Isn't that what that is?**
 6 Q I don't know. I'm asking you.
 7 What did you mean by politics?
 8 **A That's what I would say.**
 9 Q Family values?
 10 **A Yeah.**
 11 Q And what do you mean by it
 12 should be rewarded?
 13 **A A lot of people are -- oh, come**
 14 **on, you know, it's meaningless. There's**
 15 **nothing there. It's just chatter.**
 16 Q And then he reports back, "Aaw,
 17 shucks, I'm blushing now."
 18 Do you see that?
 19 **A I guess that's because I said he**
 20 **was cute. I call most people lamb chop.**
 21 **Most guys think they're the only ones I say**
 22 **it to. I've got 2000 senior executives in**
 23 **the computer industry who think they're the**
 24 **only ones I call lamb chop. Come on,**
 25 **honey.**

Contested

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1 O'Gara
 2 Q I'm feeling left out.
 3 **A Let's deal with this. You know,**
 4 **I mean, it's a dog eat dog world out there.**
 5 Q Yeah, and I think I saw all of
 6 that except the focus on politics. That
 7 seemed like an odd word in this context.
 8 **A I don't know. We were talking**
 9 **about other kinds of things. You know, you**
 10 **have to talk about other subjects with**
 11 **people and he was probably telling me about**
 12 **his kids and, you know, local school**
 13 **election or whatever. It's --**
 14 Q So this was just chatter?
 15 **A This is just chatter. This is**
 16 **southern bell kind of chit cat, you know,**
 17 **just keep talking and maybe you'll get what**
 18 **you want, whatever it is.**
 19 Q So then on 192, Dean Zimmerman
 20 at SCO writes to Blake Stowell and writes,
 21 "Am I impressed you actually got Maureen
 22 O'Gara to say something that was, well,
 23 nice about SCO."
 24 Do you see that?
 25 **A Yes, I do.**

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1 O'Gara
 2 Ms. O'Gara that 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 license. 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 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
 17 talking to us than to IBM that there had
 18 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
 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

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1 O'Gara
 2 paid all that money once upon a time for
 3 UNIX. As for everybody else, well he
 4 hadn't gotten around to reading their
 5 agreements yet."
 6 Do you see that?
 7 **A Yes.**
 8 **Q** And do you stand by your story?
 9 **A I stand by my story.**
 10 **Q** You were accurately reporting in
 11 your story what Mr. Heise said to you?
 12 **A Yes.**
 13 **Q** And to the extent that his
 14 declaration disclaims what you reported in
 15 your story, his declaration is incorrect?
 16 **MS. FOLEY:** Object to the form
 17 of the question. I'm going to direct
 18 the witness not to answer that
 19 question.
 20 **Q** Are you going to follow your
 21 counsel's instruction?
 22 **A That's why she's here.**
 23 **Q** Now let's look at what we'll
 24 mark as 196.
 25 (Whereupon, Exhibit 196 was

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1 O'Gara
 2 marked for identification.)
 3 **A Why does the print keep getting**
 4 **littler and littler?**
 5 **MR. JACOBS:** I seem to be shy a
 6 copy of this one.
 7 **MR. GONZALEZ:** Maybe I can just
 8 look at it and give it back to you.
 9 **MR. JACOBS:** Yes.
 10 **Q** So this is an e-mail to you
 11 dated May 30, 2005, Exhibit 196, produced
 12 under SCO 1647696 to 697.
 13 Do you see that?
 14 **A I don't see a date on it.**
 15 **Q** Right at the top.
 16 **A Oh, there it is, okay.**
 17 **Q** And the subject is, "I need you
 18 to send a jab PJ's way."
 19 **A Okay.**
 20 **Q** Do you see that?
 21 **A Uh-huh.**
 22 **Q** Who is PJ?
 23 **A PJ is the purported author of**
 24 **the Groklaw site.**
 25 **Q** What is the Groklaw site?

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1 O'Gara
 2 **A It is a website that follows the**
 3 **SCO case - I should say cases maybe but.**
 4 **Q** Did you have a view in March of
 5 2005 about whether PJ or the Groklaw site
 6 was a reliable source of information on the
 7 SCO litigation?
 8 **A Yes.**
 9 **Q** What was your view?
 10 **A It was not reliable.**
 11 **Q** And what was the basis for that?
 12 **A It is a propaganda site.**
 13 **Q** Propaganda in what sense?
 14 **A It's unbalanced.**
 15 **Q** In contrast to what you believe
 16 you were doing?
 17 **A In contrast to what anybody is**
 18 **doing.**
 19 **Q** But more particularly your
 20 reporting?
 21 **A I suppose you could compare it**
 22 **to my reporting.**
 23 **Q** And in comparison you felt you
 24 were balanced or more balanced compared to
 25 her reporting?

Contested

Contested

Contested

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1 O'Gara
 2 **A She's not reporting. That's not**
 3 **reporting. Reporting has to do with facts.**
 4 **She is writing a piece. It's an editorial**
 5 **or editorializing.**
 6 Q And that was the view you held
 7 in March 2005?
 8 **A Yes.**
 9 Q And then you did, in fact, write
 10 a story about PJ or Pamela Jones, didn't
 11 you?
 12 **A Yes.**
 13 MR. JACOBS: Let's take a look
 14 at that. We'll mark this as 197.
 15 (Whereupon, Exhibit 197 was
 16 marked for identification.)
 17 Q So in 196, Stowell says in the
 18 subject line, "I need you to send a jab
 19 PJ's way," and that's March 30, 2005?
 20 **A Yes.**
 21 Q And 197 is your May 9 to 13,
 22 2005 issue of Client Server News 2000,
 23 correct?
 24 **A Yeah.**
 25 Q And the lead story is "Who is

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1 O'Gara
 2 Groklaw about the SCO v. IBM suit."
 3 Do you see that?
 4 **A Uh-huh.**
 5 Q What is a herodin?
 6 **A I suppose we could look it up in**
 7 **the dictionary.**
 8 Q Why did you use the word?
 9 **A Because it's accurate.**
 10 Q And in what way is it accurate?
 11 **A Have you read Groklaw?**
 12 Q I'm sorry, I get to ask the
 13 questions.
 14 **A If you read Groklaw, you would**
 15 **know that herodin is the right word. There**
 16 **is a difference between a good word and a**
 17 **right word.**
 18 Q See if you agree with this
 19 definition --
 20 MR. GONZALEZ: Again. Objection
 21 to scope.
 22 Q Herodin, noun, a woman regarded
 23 as scolding and vicious.
 24 **A Uh-huh.**
 25 Q Is that a definition that

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1 O'Gara
 2 Pamela Jones," correct?
 3 **A Yeah.**
 4 Q Is there a causal relationship
 5 between Blake Stowell's e-mail to you and
 6 the appearance of the story in Client
 7 Server News 2000, May 9 to 13, 2005?
 8 **A No.**
 9 Q You did it independently, you
 10 did the story on PJ --
 11 **A I have reason to do a story on**
 12 **Pamela Jones that has nothing to do with**
 13 **SCO.**
 14 Q Nothing to do with SCO asking
 15 you to?
 16 **A It has nothing to do with SCO.**
 17 **It's a matter of my own personal integrity.**
 18 **She called it into question.**
 19 Q That's what prompted this
 20 article?
 21 **A That's what prompted my interest**
 22 **in finding out who she was, yes.**
 23 Q And in that article you said, "A
 24 few weeks ago, I went looking for the
 25 elusive herodin who supposedly writes the

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1 O'Gara
 2 applies to your use of the word herodin?
 3 **A I think it's accurate.**
 4 Q Scolding and vicious?
 5 **A Uh-huh.**
 6 Q As you sit here today, do you
 7 have any regrets over printing 197?
 8 **A No.**
 9 MR. GONZALEZ: Objection.
 10 Q Do you have any regrets about
 11 finding the identity reporting information,
 12 personal information about Pamela Jones?
 13 **A No.**
 14 Q And again, "Who is Pamela Jones"
 15 had nothing to do, the story on 197, your
 16 testimony is that it had to do with Blake
 17 Stowell's March 30, 2005 e-mail with the
 18 subject "I need you to send a jab PJ's
 19 way"?
 20 **A I think he defines what the jab**
 21 **would be, which is something that we**
 22 **ignored, you know.**
 23 Q The answer is?
 24 **A No.**
 25 Q Now let me show you a document