1   happen. IBM, first of all, argues that there was an

2   authorization, but they don't point to the Court or to us any

3   basis for that supposed authorization.

4   Santa Cruz understood that the product was to be

5   developed. Santa Cruz understood that there would be sharing

6   of the code as part of the project, but there is no allegation

7   and no proof that anyone at Santa Cruz or SCO actually knew

8   they had a claim. More importantly, IBM's arguments ignore

9   the key evidence that we've uncovered. It is highly relevant

10   that IBM itself thought and its product release did not

11   authorize itself to use the code. And I'd like to walk the

12   Court through that in a little bit more detail.

13   SCO must prove that IBM's copying was unauthorized.

14   Part of that proof is the question of the operation of the

15   JDA. Very relevant evidence as to the operation of the JDA is

16   how IBM thought the JDA operated. Accordingly, very relevant

17   evidence to our claim is IBM's view that it was not authorized

18   under the JDA to undertake the copying it did. There is just

19   no question that that evidence is relevant. IBM's argument

20   produces the claim that the evidence is irrelevant, that it

21   added nothing, that we could have brought a copyright claim

22   without knowing that IBM thought that the release was

23   pretextual. I don't think that's true to the extent that an

24   argument is an accrual argument. And I'll address that in a

25   moment, Your Honor.

1   IBM tends to confront the three reasons that we've

2   offered for why we think it is appropriate. Some of the

3   reasons are ones that IBM has frankly mischaracterized. They

4   first discussed the documents and say that we dismissed the

5   documents. As I said, that misses the point that as many of

6   the documents that are released, they did not either attempt

7   or give any basis for thinking they have copyright claims.

8   And none of the documents suggest that anyone at Santa Cruz

9   knew that IBM itself regards itself as having lack of

10   authorization of the copying of the code. That is a critical

11   aspect of the claim we propose to bring. It is an aspect that

12   we could not have discovered possibly until we reviewed the

13   documents in this litigation.

14   Argument -- IBM then argues the issue of whether we

15   should be imputed to have what little knowledge Santa Cruz

16   might have had about the subject matter of the claim. We

17   think IBM misses the point there, as well, Your Honor. IBM

18   cites no case for its proposition and for purposes of Rule 15

19   that plaintiff should have knowledge of its predecessor

20   imputed to it. These are the cases that IBM cites, cases in

21   which the defense of laches had already barred the

22   predecessor's claims when the predecessor purported to assign

23   the claims to the successor. Those cases make sense. If

24   laches were to preclude the predecessor's lawsuit, he should

25   not be permitted to escape his untimeliness by selling or

1   giving his patent or other intellectual property rights to a

2   successor to then try to file a timely lawsuit.

3   SCO does not seek to gain any rights that Santa

4   Cruz did not have. The only issue here is whether SCO can

5   bring a new claim as an amendment in this proceeding. IBM

6   cites no cases to support its oral argument that knowledge of

7   Santa Cruz, however limited, should be imputed to us.

8   IBM illustrates what I think is its failure to

9   confront our main argument where it says the most basic of

10 public and internal investigations would have revealed the

11 basis for our proposed claim. That is not true. It's not

12 remotely true. We would not have known even with the most

13 intense investigation that IBM itself viewed itself as

14 unauthorized to publish and to copy code as it did. That's

15 critical evidence, Your Honor.

16   IBM argues that we acknowledged in our opening

17 brief the JDA applied. That's not true, Your Honor. Here's

18 the statement we made in our opening brief.

19   SCO recognizes that the parties' JDA for

20   Project Monterey contains a forum selection

21   clause for New York courts.

22   We acknowledge that the JDA contained a forum

23 selection clause. We weren't obligated to raise every

24 argument, Your Honor, in which 22.3 would not apply.

25   We're also at the height of formality here, Your

1   Honor. IBM filed an ex-parte motion for leave to file a

2   surreply after they concluded that when we raised the issue of

3   waiver in the applicability provision in our reply brief, they

4   argue that we raised that for the first time. They got

5   permission to file a surreply. They filed a 16-page surreply,

6   and we're here arguing the points before Your Honor. I think

7   it's an incorrect argument, and in any event, a technical one

8   that shouldn't preclude the consideration of merits.

9   As to the interpretation, Your Honor, of

10   Section 22.3 of the JDA, IBM ignores again our main argument,

11   which is by their own lights, the provision doesn't make any

12   sense. They leave the accrual portion of the provision out

13   because it would give the provision an unreasonable reading.

14   They cite several cases that they say support their arguments,

15   that in light or analogous provisions a forum selection clause

16   should apply.

17   We think those cases make our point. In contrast

18   to those cases, Section 22.3 does not encompass all claims

19   relating to or arising under the agreement or concerting the

20   parties' rights and duties under the agreement. That is not

21   the scope of this provision. That's the scope of 20.1. It's

22   a reason not to give the reading of 22.3 that IBM does.

23   IBM argues that there's been no waiver of the

24   provision. We think that's wrong, Your Honor, for one basic

25   reason, which is the scope of the Ninth Counterclaim. I

quoted the Ninth Counterclaim before, and it is extremely

broad. It asks for a declaration of non-infringement. It

does so in plain language. It was a counterclaim that

exceeded the scope, as Mr. Marriott concedes, as praise as

written that he exceeds the scope of our claims. That makes

it not a compulsory counterclaim, as Mr. Marriott again

explicitly concedes, but a permissible counterclaim. Parties

pursue litigation from one forum constitutes the waiver of

that party's ability to enforce the forum selection clause to

another forum.

The Ninth Counterclaim is permissive. None of

SCO's claims required any fact finder to determine whether

IBM's development of AIX violated any SCO copyrights. We

think the precident makes clear that the defendant waives any

venue objections when it objects to new issues in the case.

10th Circuit held long ago in Thompson, 1962, that the filing

of a counterclaim can constitute the waiver of a forum

selection clause.

IBM cites a more recent 10th Circuit case,

Campbell, I believe it's Campbell, in which the Court

concludes that if the counterclaim was compulsory, it would

not be a waiver. But the rule as it stands and as we can

prove from a variety of precidents is that the defendant

voluntarily submits himself to the forum through filing a

permissible counterclaim. We think the plain language of the

1   Ninth Counterclaim makes it clear that it's permissive.

2   I'll address in a moment, Your Honor, the question

3   of whether IBM's re-interpretation of its Ninth Counterclaim

4   makes any sense. I want to address IBM's brief argument on

5   the non-waiver provision in the JDA. We cited the case in our

6   briefs that show where the party's conduct constitutes a

7   waiver generally of venue objection, even if there is a

8   no-waiver condition in the contract, that is not a right to

9   the waiver, constitute a waiver, both of the no-waiver

10 provision and of the venue objection generally in federal

11 court.

12   The cases IBM cites don't support its argument. In

13 the Roboserve case, the Seventh Circuit case, the Court

14 acknowledged only that the waiver of authority in Illinois

15 holds that, Waiver Only in Writing provisions can be waived by

16 words and deeds of the parties. And I think IBM's Ninth

17 Counterclaim constitutes a deed by which IBM intends to inject

18 new issues into the case.

19   IBM argues that its Ninth Counterclaim shouldn't be

20 read as written. IBM says its Ninth Counterclaim is not

21 intended to encompass SCO's claims. And it's filed a motion

22 styled, A Motion For Entry of Order Limiting the Scope of the

23 Ninth Counterclaim. The motion is fully briefed. I take it,

24 Your Honor, it will be heard another time.

25   But in sum, in our opposition to that motion, we

1   point out that among other things, IBM filed that motion only

2   having seen after the October 2004 hearing before the

3   magistrate court the evidence of its violation of SCO's

4   copyrights and the evidence that it knew it was not authorized

5   to use SCO's code.

6   IBM doesn't seek leave to amend the counterclaim

7   but seeks leave to ask the Court to enter an unprecedented

8   order that would retroactively limit the scope of

9   (unintelligible).   It's unprecedented.   IBM cites

10   unprecedented to support a motion.   And the motion directly

11   contradicts IBM's argument to this Court in September of 2004,

12   as Your Honor may recall, with respect to our motion to

13   dismiss IBM's Tenth Counterclaim as a permissive one.   IBM

14   argued at that point that what you should control is the plain

15   language of the scope of our copyright claim.   In our view,

16   our copyright claim was more narrow than IBM interpreted it to

17   be.   And we argued that the plain language didn't support

18   IBM's agreement.   And IBM argued that the plain language had

19   to control.   And the Court adopted, as we understand the

20   Court's order, that rule, that the plain language of the

21   counterclaim would control and the plain language of SCO's

22   allegations would control.   I don't see why a different rule

23   would apply in this instance.

24   In short, Your Honor, IBM's argument ignores the

25   crucial fact that there is no undue prejudice.   IBM's argument

1   deduces the claim without any citation or precident or

2   authority remotely analogous, that Santa Cruz' limited

3   knowledge should be imputed to us. And we think those

4   arguments are wrong.

5   And as a last point, Your Honor, the question of

6   the extent of Santa Cruz' knowledge is a statute of

7   limitations accrual question. It is not a question that is

8   relevant to the policies of Rule 15. At the very least, Your

9   Honor, the question of when a claim (unintelligible) is a fact

10   question, and we cited cases in our brief showing that it is a

11   fact question, not only requiring discovery, but is one that

12   cannot be resolved in summary judgment. An intense fact

13   question. And to the extent that the document, the new

14   document that IBM submitted suggests that Santa Cruz had a

15   certain level of knowledge of copying, which is different from

16   the question of any knowledge of IBM's knowingly unauthorized

17   copying, that IBM acknowledged the copying was unauthorized,

18   that is a fact question. And the fact that Mr. Marriott has

19   brought in new documents, ones that we have not seen before,

20   only highlights what that question is. It is no basis for

21   (unintelligible). Thank you, Your Honor.

22   THE COURT: Thank you.

23   MR. MARRIOTT: May I have just a moment, Your

24   Honor? I can segway easily, if you like, into the scheduling

25   discussion.

1   THE COURT: But you want -- well, the scheduling

2   discussion is not going to be very lengthy.

3   MR. MARRIOTT: Perhaps not.

4   THE COURT: You want to say something? You want to

5   reply to his reply?

6   MR. MARRIOTT: I would if I could.

7   THE COURT: How long?

8   MR. MARRIOTT: Three minutes.

9   THE COURT: Then he still gets the last word. It's

10   his motion.

11   MR. MARRIOTT: That's fine with me.

12   MR. NORMAND: Your Honor, that's fine.

13   THE COURT: I'll give you two minutes.

14   MR. MARRIOTT: Okay. Thank you.

15   First, Mr. Normand suggests that he heard nothing

16   from IBM with respect to prejudice. As I said at the outset,

17   Your Honor, we are not making here all of our arguments.

18   There is no question that it would be prejudice to IBM if this

19   motion would be allowed. If it would be allowed, it would be

20   prejudice because the forum selection clause would be read out

21   of the contract. There would be prejudice because new issues

22   would be inserted in this case which are otherwise not here.

23   Like, for example, whether IBM has a license to include Unix

24   System VR-4 code into this product. That issue is not in this

25   case. That is the central issue in all likelihood in their

proposed claim.

The proposed claim, Your Honor, concerns a contract between IBM, a New York corporation, and the Santa Cruz Operation, Inc., a California corporation, not the SCO Group, Inc., a Utah based company.

SCO suggests, Your Honor, by way of its inquiry in SCO's arguments that a party is not on notice for purposes of inquiry notice unless that party has all of the evidence, which we indicate the alleged underlying violation. That's wrong, Your Honor. If that were the rule, there would be no inquiry notice as a test.

Mr. Normand suggests that Rule 15 somehow is oblivious to whether a party knew or should have known. That's a fact question he says the Court couldn't possibly resolve in this posture. Courts resolve that question all the time in this juncture, Your Honor. If Mr. Normand were right that that was a fact question and the Court couldn't hear it and consider it, we would never have these decisions laid out in our book in which courts have denied amendments because the party should have known of the alleged misconduct.

With respect to the scheduling points, Your Honor, I guess my question is whether the Court intends to hear any argument with respect to that. If it does not, I'd like to show one other exhibit, which I think is of some consequence to this.

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 1              THE COURT:   Consequence to this motion?

 2         MR. MARRIOTT:   It is.

 3         THE COURT:   Or referring to schedule?

 4         MR. MARRIOTT:   It is the consequence of both.

 5         THE COURT:   Well, show it.  We're going to have a

 6    brief discussion about scheduling.

 7              Now, tell me how this is of consequence to this

 8    motion.

 9         MR. MARRIOTT:   I will, Your Honor.  It is of

10    consequence to this motion because this chronology which lays

11    out the events concerns both.  The reason it relates to

12    scheduling, Your Honor, because one of the scheduling

13    questions is whether the Court should enter an order which

14    includes a new deadline for filing amended pleadings.

15         THE COURT:   Yeah, that is one of the questions.

16         MR. MARRIOTT:   Pardon?

17         THE COURT:   That is one of the questions.

18         MR. MARRIOTT:   That is one of the questions.  And

19    that question is also obviously relevant to the motion that

20    SCO should be allowed to amend its complaint.  The documents

21    that SCO contends is the newly discovered evidence are

22    indicated here with asterisks, Your Honor.  At the tabs,

23    you'll see the correspondence which indicates when these newly

24    discovered pieces of the evidence were produced.  There is a

25    factual record, and it is right here.  And this is the record
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1   that indicates when the documents were produced. Three of the

2   six, as I say, were produced before the close of fact

3   discovery.

4   Your Honor, the code in question, IBM AIX For Power

5   product, was produced to SCO in March of 2004, as indicated on

6   this document. SCO says in its papers that it was relatively

7   easy to determine from those -- from that code that IBM

8   infringed because it says that IBM copied hundreds of

9   thousands of lines of code, to put that code into its AIX For

10   Power product. SCO had that discovery, Your Honor, by

11   March 4th. On April 5th, it filed a motion seeking to amend

12   the scheduling orders. In that motion to amend, which is laid

13   out here in the book, Your Honor, it asks for date after date

14   after date for events in this case. Not a single one of those

15   dates concerns a date for amending pleadings.

16   The parties appeared before the Court on June 8th,

17   2004, for a hearing with respect to the scheduling order, at

18   which point SCO had had the allegedly critical documents, at

19   which point all of the allegedly critical documents were in

20   its possession, some for more than six months, the code which

21   he said was -- well, that it easily determined was in

22   possession. And nothing was said at that hearing about a

23   need, Your Honor, to amend the schedule to have a new date for

24   which to file an amended pleading. That is indicative of

25   there not being either good cause or extraordinarily good

1   circumstances. Thank you.

2   THE COURT: Thank you.

3   Mr. Normand?

4   MR. NORMAND: Thank you, Your Honor. I won't dwell

5   on the point. As I said, I don't know personally whether what

6   IBM has represented about the documents is accurate. To the

7   extent Your Honor thinks it might be relevant, we ask for the

8   opportunity to respond to the submission that they made.

9   Mr. Marriott said earlier that, I think he said three of the

10 six were produced in November of 2003; three of the most

11 relevant were not. Even as to those that were produced, we

12 received them only a few months before the original amendment

13 of pleadings. Thank you, Your Honor.

14   THE COURT: Thank you.

15   All right. Now who's going to talk now about

16 scheduling? Mr. Marriott?

17   MR. MARRIOTT: Yes, sir.

18   THE COURT: Who over here?

19   MR. NORMAND: Your Honor, I will.

20   THE COURT: All right. Now, I have your proposed

21 schedules. Talk to me briefly, each of you, about what

22 difference in your proposed, if any, the magistrate's order

23 entered yesterday may make and what difference -- what your

24 proposals would be if I allowed plaintiff to amend or if I

25 didn't allow plaintiff to amend.

1   MR. NORMAND: Yes, Your Honor. We have a revised

2 scheduling order. May I approach?

3   THE COURT: Yes. Have you given Mr. Marriott a

4 copy of it?

5   MR. MARRIOTT: He has, Your Honor.

6   THE COURT: Okay. This is your proposed revision;

7 right?

8   MR. NORMAND: Yes, Your Honor.

9   THE COURT: And this is after the order yesterday

10 by Magistrate Wells?

11   MR. NORMAND: Yes, Your Honor. The modifications

12 to the scheduling order --

13   THE COURT: Would this be affected by my ruling on

14 the motion to amend?

15   MR. NORMAND: It would not, Your Honor. It

16 proposes an amendment deadline.

17   THE COURT: Okay.

18   MR. NORMAND: You see near the top of the page,

19 Your Honor, amendment deadline of June 17, 2005.

20   THE COURT: Okay.

21   MR. NORMAND: The differences between this revised

22 schedule and the schedule we submitted several weeks before

23 the magistrate's court order relate to merely timing.

24   THE COURT: Relate to what?

25   MR. NORMAND: Timing. The magistrate court order

1   gave IBM, as we understand it, as of yesterday --

2   THE COURT: Most schedules do relate to timing.

3   MR. NORMAND: Then I'm right.

4   THE COURT: You are right. You are certainly --

5   I'll take judicial notice of the correctness of your last

6   statement.

7   Excuse me. Go ahead.

8   MR. NORMAND: Thank you, Your Honor. I have that

9   going for me.

10   The magistrate court's order gave IBM 90 days from

11   yesterday to comply with the discovery order the magistrate

12   court had originally entered in January. Accordingly, we've

13   changed our schedule in roughly proportional fashion, moved

14   dates back. Of course, we moved the fact discovery deadline

15   back 54 days, as indicated in the footnote. And we've moved

16   most of the other dates back about 90 days. We don't presume

17   to take a full 90 days that the Court has given. We would

18   take 70 days. We think that the delay in the production is

19   relevant to our ability to structure the order as we

20   originally proposed it.

21   THE COURT: Thank you.

22   Mr. Marriott?

23   MR. MARRIOTT: Your Honor, I believe that

24   Magistrate Judge Wells' order doesn't change much of our

25   proposed schedule, except that I would suggest that by

1 adjusting outward the dates two months would accommodate the

2 Court's order of yesterday.

3   With respect to the other question, adding that

4 complaint, Your Honor, would from our perspective complicate

5 the case and require a line of discovery which was otherwise

6 not contemplated and which is otherwise not necessary and

7 would require a minimum of nine months additional time.

8   THE COURT: Have you looked at this?

9   MR. MARRIOTT: I was handed that at the beginning

10 of the hearing, Your Honor. I have not studied that.

11   THE COURT: All right. Thank you.

12   Now, do either of you -- is there -- would you be

13 able to sleep tonight based on what you've told me about

14 scheduling? I don't want you to go home and say, oh, gee, I

15 wish I would have said that when we talked about scheduling.

16 That happened to me a few times when I was practicing. Why

17 didn't I say X? So is there something else you want to say

18 about scheduling?

19   MR. NORMAND: Well, I know if I don't say

20 something, Mr. Eskovitz will tell me I should have said

21 something. Two main points --

22   THE COURT: That's reason enough. You don't want

23 your partners calling you in the middle of the night.

24   MR. NORMAND: Thank you, Your Honor.

25   Mr. Marriott first said he doesn't see how the

1   magistrate's court order changes their proposed schedule.

2   We'll point out that their proposed schedule from a few weeks

3   ago presupposed that they would win a motion for

4   reconsideration.

5   The other point, Your Honor, is the reasons I

6   outlined my argument on the motion to amend, to the extent to

7   the nine-month discovery schedule that IBM proposes for fact

8   discovery, which is what I heard Mr. Marriott say, to the

9   extent that that is premised on Project Monterey discovery, we

10 think that has to be incorrect. Project Monterey is in the

11 suit. We don't, SCO, need to take substantial additional

12 discovery. And there's a six- to eight-month discovery under

13 our schedule that we think is plenty to accommodate Project

14 Monterey. Thank you.

15   THE COURT: Thank you.

16   Mr. Marriott, do you want to sleep well tonight?

17   MR. MARRIOTT: I do, Your Honor. Project Monterey

18 is not in the case in the sense in which they propose to put

19 it in the case, the words mentioned in the case to be sure.

20 The issues presented by their motion is not here, and I think

21 an additional nine months would be required with respect to

22 that.

23   I don't think, to respond briefly to what

24 Mr. Normand said about my comment about Judge Wells' order, I

25 don't think that doesn't affect the case at all. I think I

1 said it would shift about two months in the proposed dates.

2   The one thing which I'd like to mention with

3 respect to the proposed schedule is set out in the papers, but

4 I think it deserves special emphasis. We believe that it is

5 critical that the Court enter a proposed scheduling order that

6 includes a provision which requires both parties to disclose

7 the allegedly misused material, whatever it is, by a date

8 certain, and that the parties then have an opportunity

9 subsequent to the disclosure of that allegedly misused

10 material to take discovery with respect to that material.

11   The Linux Operating System, Unix System V, AIX, and

12 Dynix, include collectively hundreds of millions of lines of

13 code, Your Honor. When they identified that which IBM has

14 alleged to have misused, we're going to need to take discovery

15 with respect to that identified code. We're going to need to

16 take discovery with respect to who and when, where, why, how.

17 We're going to need to take discovery with respect to whether

18 it's subject to contracts, whether it's subject to copyright

19 principles. We're going to need to take discovery with

20 respect to whether it's in public domain, and if so, to what

21 extent.

22   Your Honor, our proposal is that the Court impose

23 an interim deadline, by which the parties disclose, I

24 understand already should have been done, if the parties have

25 additional information they disclose that and that there be a

1   final deadline. And after that deadline, the target is fixed.

2   The experts are not permitted to disclose additional

3   information in their reports or other pretrial submissions.

4   They're not allowed an opportunity to add additional uses

5   about that which was supposedly misappropriated. The target

6   is fixed.

7   That's the only way, Your Honor, if there's allowed

8   to be a period of brief fact discovery after that we can

9   properly prepare our defense. The only other alternative,

10 Your Honor, is to undertake that kind of investigation with

11 respect to the hundreds of millions of lines of code in issue

12 in the case under a hypothetical, yet unasserted theories of

13 liability. That is impossible, and any scheduling order we

14 respectfully submit should include that kind of provision.

15   Now, they've made various arguments against it,

16 Your Honor. We've laid out in our papers why none of them are

17 respectfully are any good. If as they contend we will get

18 this information in the ordinary course, which is their

19 argument, then they ought to have no difficulty agreeing to a

20 schedule in which there is that kind of provision.

21   And respectfully, the reason that they don't

22 particularly care about that provision is that IBM has

23 disclosed to them 700,000-plus lines of code, line for line

24 match up that we contend that they infringed in our copyright

25 claim. That we don't have. That we want. That we think we

1   need in order for this case to progress. Thank you.

2   THE COURT: Thank you.

3   Mr. Normand?

4   MR. NORMAND: Thank you, Your Honor. The parties

5   do disagree over the structure of the fact discovery. We have

6   proposed that the fact discovery in this case proceed as it

7   does in every other civil case, with mutual discovery. IBM

8   wants a period of unilateral discovery to begin very shortly.

9   They want that period to begin on August 11th. That's not

10   enough time for us to review the code.

11   IBM's unilateral discovery proposal fails for

12   several other reasons in addition, Your Honor. First, our

13   schedule conforms that mutual discovery contemplated in the

14   federal rules and the one that was structured in the previous

15   schedule orders. And we think it would be odd if that

16   framework changed as a result of -- as reflected in the

17   magistrate court's January order, IBM's failure to produce

18   relevant evidence for over a year.

19   IBM can prepare a defense to SCO's claims during

20   the period of mutual fact discovery. IBM has served

21   interrogatories on SCO, and SCO is under an obligation to

22   respond to those interrogatories. We will do so as soon as we

23   can. If it arises that IBM is of the view that it has not

24   received our responses to their interrogatories in enough time

25   to complete discovery, that is an issue to raise with the

1   Court at that point. The Court is full of arsenal of measures

2   it can take to allow more time or to preclude us from using

3   evidence if we haven't produced responses to those

4   interrogatories in time.

5   IBM's argument suffers we think also from a very

6   fundamental flaw. No one knows better than IBM what they

7   contributed to Linux, how it was derived, how it was created.

8   The notion that IBM is flying blind is absurd.

9   Thank you, Your Honor.

10   THE COURT: Thank you.

11   Anything else?

12   All right. Thank you all. I'll take these motions

13   under advisement and get a ruling out in due course.

14   Court will be in recess.

15   (Whereupon, the court proceedings were concluded.)

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STATE OF UTAH   )

) ss.

COUNTY OF SALT LAKE   )

        I, KELLY BROWN HICKEN, do hereby certify that I am
a certified court reporter for the State of Utah;

        That as such reporter, I attended the hearing of
the foregoing matter on April 21, 2005, and thereat reported
in Stenotype all of the testimony and proceedings had, and
caused said notes to be transcribed into typewriting; and the
foregoing pages number from 3 through 96 constitute a full,
true and correct report of the same.

        That I am not of kin to any of the parties and have
no interest in the outcome of the matter;

        And hereby set my hand and seal, this ____ day of
_____ 2005.

_____
KELLY BROWN HICKEN, CSR, RPR, RMR