

are compared to Philadelphia. I certainly subscribe to the idea we ought to help with the resources, but let the local school districts decide for themselves what it is they need. The basic class size in Wyoming happens to be less than 18.

I am very pleased to have on the floor of the Senate the Senator from Idaho, another western Senator, who is also chairman of our policy committee. I yield as much time as he desires.

Mr. CRAIG. Mr. President, I thank my colleague from Wyoming for allowing me time this morning.

MICROSOFT

Mr. CRAIG. Mr. President, I have listened to the Senator from New Hampshire speak in what I call the common sense of New Hampshire. I think all Members have been frustrated by this administration running a flag up the pole every morning at the White House to see which way the wind is blowing and then not only attempting to shift Government policy but oftentimes bringing Government to an entire halt until they can determine if the direction in which they are heading is the right direction.

Another example of a misdirected effort by this administration was announced on Friday. I think all Members were paying attention to some degree and were anxious to hear how a Federal judge could decide to run the technological world in which we are living better than the marketplace itself. Sure enough, on Friday, Thomas Penfield Jackson, the judge down at the Justice Department who examined the ins and outs of Microsoft and the marketplace, has determined that Microsoft is a predatory monopoly.

I am no expert in this field, and I am not going to hold myself out on the floor this morning to be so. I ask unanimous consent to have printed in the RECORD two editorials.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. DEPARTMENT OF MICROSOFT

At its highest levels, the educational system is still capable of giving its money's worth, and taxpayers certainly spent enough to educate Thomas Penfield Jackson on Microsoft's struggle to manage what it pleased the judge Friday to call the company's "monopoly" in computer operating systems. We guess now the government is going to have to run Microsoft.

We also see the failure of Microsoft's strategy, which was to deny the meaning of its own actions, lest those actions retroactively be found illegal because the court pins the label "monopoly" on it. That was unfortunate. Microsoft had a strong case to make that it had behaved in the only way any rational competitor could have.

Microsoft should have argued that we have a monopoly because our customers want us to have one. There is a great deal more software in the world than there would otherwise be, because software designers can in-

vest in creating products knowing there is an installed base of compatible operating systems that won't soon be displaced. And consumers know that they can lay out a thousand bucks or more for a PC without taking a Betamax-vs.-VHS gamble that their investment will be rendered obsolete.

What benefits our consumers is a barrier to our competitors, but as Judge Jackson points out, our real competitor is not "another product within the same software category, but rather a technological advance that renders the boundaries defining the category obsolete." What the judge calls our attempts to maintain our "applications barrier is entry" is simply our way of making sure our investment in Windows—and our customers' investment—remains viable in the face of these technological advances. Take our behavior toward Netscape. Browsing the web has become the central purpose of the PC for millions of users. If we had not aggressively promoted our browser, it would have been tantamount to helping Netscape cannibalize our business, using our own platform to render us obsolete while we stood by watching.

If Microsoft cannot act rationally in its own interest, the alternative is a government administrator to take over the business and run it for the benefit of Microsoft's competitors. Outside a Nader thought-bubble, there can't be many people who don't see this cure as worse than the disease. Northwest University Law Professor Larry Downes, writing in USA Today, notes a "precedent for a remedy of doing nothing; that is, for finding Microsoft guilty but recognizing that there was no court-administered solution that could solve the problem any better than letting the market try to work it out on its own."

What makes this less than academic is that, even without the government turning Microsoft into a public utility, the paradigm shift is happening and everybody in the business knows it. A host of new developments has already shrunk Microsoft's control over cyberspace, and events are on the way to delivering new forms of web computing that won't even require Windows.

Judge Jackson has deferred the question of whether Microsoft violated the law for a later ruling, but he hasn't left much to the imagination. If he takes his arguments and the incoherent assumptions of antitrust seriously, the only remedy is to turn Windows into a regulated utility, possibly breaking the company up.

No wonder he has repeatedly hinted he would be relieved if the parties would settle. An appeals court would likely overturn any draconian verdict against Microsoft—if a post-Clinton Justice Department hadn't already settled the case. Microsoft has mounted such a lame effort partly because it's relying on the federal circuit court of appeals. On Friday, in a significant ruling related to a private antitrust lawsuit against Intel, that court noted the "Sherman act does not convert all harsh commercial actions into antitrust violations."

By the time Microsoft reaches the appellate level, the computing world will have moved on and historians will have to be summoned to remind us what the argument was all about. Judge Jackson will have sat through the antitrust "case of the century" only to see it waddle off and expire with a whimper behind some shrub. He can't have that, so he's banging the pots and pans and trying to scare Bill Gates into settling. How much more splendid to be this generation's Judge Greene, tinkering with future releases

of Windows the way Judge Green spent 10 years tinkering with AT&T and the baby bells.

But let's get to the real bottom line. Washington's crusade against Microsoft has fulfilled its purpose, serving as a great lever to pry open the wallets of Silicon Valley. Where three years ago the technology plutocrats spent their surplus income on racing yachts and Ferraris and charity, now they patriotically send donations to Washington to support the fixer class and its retinue in the style to which it would like to become accustomed. Steve Case of AOL likes to say the future of technology will be decided in the political arena rather than the marketplace. Be careful what you wish for.

PUNISHING MICROSOFT

(By Robert A. Levy)

Here's the lesson that high-tech companies can glean from Judge Thomas Penfield Jackson's findings in the Microsoft case: If you're sufficiently ambitious, competent, and hard-working; if you're willing to risk your time and fortune; if you succeed at rising above your competition by serving customers with better products; then watch out, because our government will come down on your neck with the force and effect of a guillotine. Judge Jackson's knee-jerk recitation of the Justice Department's line is a mockery of objectivity, scornful of the facts, and congenial only to those who prefer a sterile marketplace in which vigorous competition becomes legally actionable.

Let's start with the judge's big picture: an industry crippled because Microsoft's competitors are unable to innovate. Yet how to explain Netscape's 410 billion price tag, or continued market leadership by Microsoft arch-rivals Oracle, Intuit, AOL, Sun Microsystems, and Real-Networks? How to explain Apple's growth in both sales and profits? Indeed, if Microsoft's "prodigious market power" and "immense profits" have been used to stifle innovation, then how to explain the incredible success of Linux, which now runs more Web sites than any other server operating system?

In an unguarded moment, Sun's CEO, Scott McNealy, recently crowed that "Windows is dead" when it comes to new software applications, Mr. McNealy may be right. Despite Judge Jackson's snapshot view of the software market, the Internet has profoundly and permanently altered the dynamics. Will Microsoft lose out to consumer electronics products? Mr. McNealy doesn't know, and neither does Judge Jackson. But those products are out there, they're selling well, and they are competition.

What about Web-based software—probably the most formidable threat to Microsoft's dominance? Instead of buying and selling applications like word processors and spreadsheets, users can rent the same functions from Internet services—or get them free if they sit through advertising.

The only essential user program is a Web browser. As the Wall Street Journal put it: "If users don't need PCs with Microsoft's Windows operating system or Intel chips—the vaunted market power of the duo called Wintel doesn't seem so unshakable."

The important points is this: Many desktop machines that access Web-based servers are "Windows-less" products, and Microsoft's major OEM customers are climbing on the band wagon. Gateway is building a line with no Microsoft software at all, and may jointly market it with AOL, which is a major Gateway investor. Dell also plans to bring out a line of Internet computers, some

without Microsoft software. Compaq's chief executive observes that its new generation of products will "redefine Internet access."

Another industry executive stated that "the Internet gives people a platform to do most of the things they need to do on a PC without a cumbersome and expensive operating system."

Judge Jackson, infinitely wiser about such matters now that he knows how to use his computer, has an astonishing two fold response to the emergence of Web-based servers. First, he contends that "Windows has retarded, and perhaps altogether extinguished" the server threat. That contention has a surreal quality: Judge Jackson describes an event that never actually happened but, if it had happened, it would have crippled competition. The same dialectic creeps into his anecdotal chronicle of Microsoft's persecution of Intel, Apple, and Compaq, as well as Microsoft's supposed market-splitting with Netscape. "OK, so this thing Microsoft tried to do never did materialize. The other guy never agreed to it and ultimately he did what he wanted. But what a hobbling impact on innovation if things had gone otherwise." Judge Jackson's second justification for discounting Web-based servers is even stranger. He claims that viable competition from server-based applications "is not imminent for at least the next few years." His projection is surely too conservative.

Venture capitalists report that they haven't seen a business plan for conventional packaged software in more than six months. Mr. McNealy predicts that fewer than 50 percent of the devices accessing the Internet will be Windows-equipped PCs by the year 2002, just a little over two years from now. Mr. McNealy has put Sun Micro systems' money where his mouth is—acquiring Star Division so he can convert its Star Office product into a free, Internet-based service that can be run directly by any user with any Web browser.

But more important, Judge Jackson's "not imminent for a few years" forecast has to be placed in context. He plans on issuing his conclusions of law in this case early next year. Then a hearing on remedies in the spring, with a possible summer decision. Then we can expect a year or so before the United States Court of Appeals finishes its review. Then another year for the Supreme Court's deliberations. Finally, even if Microsoft loses at each stage and remedies are imposed, they will not be effective overnight. In other words, the market will certainly have obviated any remedies before they can have an impact.

Meanwhile, Microsoft behaves not like a monopolist but like a company whose every survival is at stake. Its prices are down and its technology is struggling to keep pace with an explosion of fresh software products. Facing competition from new operating systems, consumer electronics, and Web-based servers, Microsoft now operates in a world where anyone running a browser will soon have the same capabilities as today's Window users. That is why the government should keep its hands off.

Mr. CRAIG. Mr. President, one editorial is by Robert Levy, a senior fellow of constitutional studies at the CATO Institute. He starts his op-ed piece:

Here's the lesson that high-tech companies can glean from Judge Thomas Penfield Jackson's findings in the Microsoft case: If you're sufficiently ambitious, competent, and hard-working; if you're willing to risk your time

and fortune; if you succeed at rising above your competition by serving customers with better products; then watch out, because our government will come down on your neck with the force and effect of a guillotine.

The editorial in the Wall Street Journal probably sums it up best of all. There is no question my colleagues from the other side of the aisle—or should I say their political machinery as expressed by—I don't want to call them outbursts, but certainly the expressions of our Attorney General, Janet Reno, are best summed up when they discussed the Microsoft case this morning in the Wall Street Journal. Here is their concluding paragraph:

But let's get to the real bottom line. Washington's crusade against Microsoft has fulfilled its purpose, serving as a great lever to pry open the wallets of the Silicon Valley. Where three years ago the technological plutocrats spent their surplus income on racing yachts and Ferraris and charity, now they patriotically send donations to Washington to support the fixer class and its retinue in the style to which it would like to become accustomed.

Steve Case of AOL, who happens to be on the other side of this issue, recognizes the problem, though. He says the future of technology will be decided in the political arena rather than the marketplace. My guess is, if that is true, your computers will not be working as well tomorrow as they are working today.

I came to the floor this morning to join with my colleague from Wyoming, not to discuss the Microsoft case; that is going to get played out over time, and I think we are going to have a Federal judge who will try to run the technology business of this country. Maybe we need to decide to start a new agency of our Federal Government called U.S. Department of Microsoft. If it is as profitable as Microsoft, maybe we can make a lot more money without taxing the American public to allow our Democrat colleagues on the other side of the aisle to spend it.

Certainly Microsoft is now making as much as \$1 billion a month in cash to spend. It is obvious somebody else wants their hands on that or wants to break up that very profitable business.

VIOLENCE IN AMERICA

Mr. CRAIG. Mr. President, what I came to the floor to talk about is a combination of issues that come together in the issue of violence. We watched the great tragedy as a fellow entered a workplace in Hawaii the week before last and killed some of his coworkers. Last week in Seattle, another man went into a business and shot and killed individuals. All of us, as Americans, are tremendously frustrated by this expression of violence or people seeming to want to solve their personal problems by acting in a very violent fashion. The Washington Post poll on Sunday showed that the No. 2

issue among Republicans was violence in the schools; the No. 4 issue among Democrats, violence in the schools; the No. 2 issue among Independents in America was violence, violence in the schools.

Our President last week suggested we live in a very violent society, when in fact violence is down substantially in our country. It is true that it is. We have come off a very violent year, but over the last 7 years the average rate of acts of violence is dropping, in the broad sense. Yet we have had some of these tremendously public-attention-gathering events that caused the American public to be concerned, as they are.

Of course, the issue I want to speak briefly about this morning is the question of how we fix this violent expression in our society. Last week, the President, Janet Reno, and AL GORE said there is a quick and easy way to fix it: We just need to pass a few more laws; gun laws, that is. We need to add to the 25,000 to 30,000 gun laws that are already on the books. If we do that, we will make America a safer place in which to live. Or at least we will say, politically, to meet the polls the Washington Post presented to us on Sunday, that if we pass the laws, the public at least will think America is a safer place in which to live. By that, we will be able to curry their political favor in the next election.

If gun laws make America a safer place, then what happened in Hawaii should not have happened; what happened in Seattle should not have happened; what happened in Littleton, CO, at Columbine High School, should not have happened—because there are laws to stop that. Mr. President, 13 laws were violated, tragically, by those two young men who later took their lives at Columbine High School in Littleton, CO, after they had killed so many of their classmates. But there was a law to stop them. Then why did it happen?

I do not know the answer to why it happened. I do know they broke a lot of laws to cause it to happen. Yet our President last week, and the Vice President, and the Attorney General said give us more laws and the world will be a safer place. We have all been on this floor discussing, for well over a year, our frustrations with problems with our culture, problems with our public schools. People are acting out their frustrations in violent ways by taking other people's lives. My guess is, you cannot legislate a fix on that one.

There are other problems within our society that have to be addressed. So let me focus for just a moment on Hawaii. There, we all know what happened. The fellow has been caught. We all know now he probably, during that act, was mentally incompetent, mentally in trouble, mentally deranged. But his actions cost lives.