



United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 106th CONGRESS, FIRST SESSION

Vol. 145

WASHINGTON, THURSDAY, MARCH 4, 1999

No. 34

Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Gracious God, we seek to receive Your presence continually, to think of You consistently, and to trust You constantly. We urgently need divine wisdom for our leadership of this Nation. We have discovered that this only comes in a reliant relationship with You. Prayer enlarges our minds and hearts until they are able to be channels for the flow of Your Spirit. You, Yourself, are the answer to our prayers.

As we move through this day, may we see each problem, perplexity, or person as an opportunity to experience Your presence and accept Your perspective and patience. We don't want to forget You, but if we do, interrupt our thoughts and bring us back into an awareness that You are waiting to bless us and equip us to lead with vision and courage. Thus, may our work be our worship this day. In the Name of our Lord. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able Senator from Washington is recognized.

SCHEDULE

Mr. GORTON. Mr. President, this morning the Senate will be in a period of morning business until 11 a.m. Following morning business, the Senate will resume consideration of S. 280, the education flexibility partnership bill. Under a previous order, Senator BINGAMAN will be immediately recognized to offer an amendment regarding dropouts. Senators should expect rollcall votes throughout today's session, and

also Friday until 12 noon. The leader would once again like to remind all Members that a rollcall vote is expected to occur this coming Monday at approximately 5 p.m. All Senators will be notified of the exact voting schedule as it becomes available.

I thank my colleagues for their attention.

MORNING BUSINESS

The PRESIDING OFFICER (Mr. ROBERTS). Under the previous order, there will now be a period for the transaction of morning business.

The Senator from Washington is recognized.

MICROSOFT

Mr. GORTON. Mr. President, last week the Government's misguided and collusive antitrust suit against the Microsoft Corporation recessed for a much-needed break. It only could be improved by making the recess permanent.

I urge my colleagues to make use of the trial's recess to learn about this case, and this industry. Nothing less is at stake here than the freedom to innovate, the key to America's economic success. We ignore this prosecution at our peril, because the United States Government is trying to kill the goose that lays golden eggs in the home states of every one of my esteemed colleagues. It is not simply a Washington-state company that needs shoring up; it is the industry leader that has fueled our recent unprecedented economic miracle, created hundreds of thousands of new jobs to fill those being lost in other sectors of the economy, established America as the global leader in high technology and redefined almost every aspect of our lives—and yet is under siege by a hopelessly time-locked Department of Justice, whose theory of antitrust was shaped in the 60s, when big business was bad, big gov-

ernment good, and facts never got in the way of a nice regulatory scheme.

Microsoft is not the only target of this Administration. Intel too is under attack by a gaggle of anti-free market attorneys at the Federal Trade Commission. The FTC says Intel uses its market power to stifle competition in the lucrative chip market. Given recent reports that in January, more computers were sold with chips made by one of Intel's largest competitors, AMD, than with Intel chips, the FTC's case seems far behind the times. But Robert Pitofsky and his cohorts press on regardless of real and dynamic markets.

Holman Jenkins summed up the absurdity of the Administration's actions eloquently in an editorial that appeared in the Wall Street Journal yesterday:

If Joel Klein, Robert Pitofsky and all their little acolytes could catch just one mugger, they would have done something of more value for the country. For that matter, we'd owe the mugger a debt of gratitude for distracting these errant knights from their destructive mission.

Of course, I know the pressures of time and schedules on my colleagues, so, of all the millions of words that have been written about the Microsoft trial since its beginning last October, I want them to note just one story, written February 18 on C-Net news.com about Microsoft's recent roller coaster ride on Wall Street. The lead paragraph won't take much more than 10 seconds of my colleagues' valuable time, but it tells everything anyone needs to know about this case:

"Microsoft shares fell as much as 3.8% today," the C-net story began, "on investor concern about threats to the company's dominance from the Linux operating system and the landmark antitrust trial."

George Orwell couldn't have put it better: With competitors baying at its heels, Microsoft has been forced to divert enormous resources to defend

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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itself against the government's contention that it has no competitors.

Actually, George Orwell himself would have rejected the travesty of what is basically a private suit brought by the government on behalf of competing multi-billion-dollar companies against their chief competitor—especially when the government is heavily vested politically in those companies' success.

Whether Orwell would have believed it or not, my colleagues need to believe it, because it's happening, and their constituents don't like it. A poll taken by Citizens for a Sound Economy in January found that 81% of Americans—not just Washingtonians, but 81% of all Americans—say that Microsoft is good for consumers. A Hart/Teeter poll also from January found that 73% of Americans echo that belief and fully two-thirds say the federal government should stay out of the dispute and let the marketplace and consumers decide the fate of competitors in the personal computer industry. A majority know enough about what's already happening in the industry to understand that the whole expensive circus is moot anyway: 51% of Americans think that the federal government should just drop the case in the wake of AOL-Netscape merger.

Our constituents are paying attention to this issue because they are consumers and are perfectly aware of how much Microsoft has improved their lives. They also see family, friends and neighbors working for companies that depend on Microsoft for their existence. There are tens of thousands of companies, large and small, that partner with Microsoft, and they are located in every state in the Nation. I'm sure my colleagues know something about them, but I'm not convinced that they are aware of their huge numbers. That's why I asked Microsoft for a state-by-state breakdown of their "partners," companies that work directly with or through Microsoft or its products. Microsoft provided me with the data, which I want to share with my colleagues.

Here, I say to the Presiding Officer the Senator from Kansas with 1,171 resale partners and 63 technology partners: Microsoft's partners fall into many categories: software retail stores; small Original Equipment Manufacturers that build and sell PC systems with Microsoft software preinstalled; Corporate Account Resellers who resell Microsoft software to large corporations; providers who sell packaged Microsoft software with value-added consulting services; PC manufacturers; and Microsoft Certified Solution Providers.

I direct my colleagues' attention to this map that shows the number of these partners in each of their own states. First, the national numbers: Microsoft has 7,279 technology partners and 112,819 resale partners.

These figures represent companies, not employees. Senator MURRAY and I

are already well aware of Washington's 2,637 resale partners and 254 technology partners. Our state's economy is absolutely booming—and it's due not only to the presence of Microsoft itself, but to the thousands of other companies that Microsoft supports. Companies like Technology Express of Bothell and Techpower Solutions Incorporated of Redmond.

But I wonder if my other colleagues have stopped to consider what Justice's assault on Microsoft might do to their own state's economies and jobs—and how their constituents might feel about that impact. Let's look at Utah as an example. Utah is home to 64 technology partners and 1,153 resale partners of Microsoft—home to real people working in real jobs for real companies. Companies like PC Innovation Incorporated in Salt Lake City and Vitrex Corporation of Ogden. Despite these facts, the senior Senator from Utah, the distinguished Chairman of the Senate Judiciary Committee, has chosen to take the side of the Justice Department and to support the Administration's efforts to squelch the freedom of companies in his own state to innovate.

My colleagues should talk with consumers about their views of technology, because as my fellow Senators begin to understand how the technology business works, they will discover consumers not only have not been harmed by Microsoft, but have benefited: Innovation is booming, choices are growing, and prices are falling for all software.

Microsoft is leading an industry that the old school Department of Justice just doesn't understand. There are none of the traditional barriers to entry in the high tech industry that have historically motivated antitrust enforcement. This market moves at the speed of ideas—and a good idea can cause a company to lose 90 percent of market share overnight—precisely what happened to once-dominant products such as WordStar and Word Perfect; precisely what could happen to Microsoft.

This Justice Department, led by Joel Klein, is brazen about its desire to intervene in markets, even when it knows little about the markets it meddles with. "Surgical intervention" is the spin that Klein and his department has coined to describe its interventionist approach.

To recap the recent history of this misguided lawsuit, the original charge—that Microsoft illegally tied Internet browsing to its operating system—was rejected before the trial even began by a 3-member Court of Appeals ruling that recognized that putting Internet Explorer technologies into Windows '95 was a beneficial integration, not a monopolistic tie-in. The Court even admonished Klein and cohorts not to try tinkering with software design and warned them to be wary of intruding into marketplace innovation and product design. A mere

week before the Court of Appeals ruling came out, the Department of Justice filed its current lawsuit against Windows 98—a product even more integrated than Windows 95.

For this trial, Klein and company simply changed tactics. Instead of arguing the case on its legal merits, the Justice Department has engaged in an all-out public relations battle. The new PR strategy has been orchestrated under Joel Klein's watch and has been the primary strategy in the courtroom as well. The government's lead lawyer, Mr. Boies has a few aggressive e-mail messages that showed Microsoft to be exactly the fiercely competitive entity that has engendered its impressive market performance, but nothing more sinister. Mr. Boies uses these same pieces of e-mail over and over again in highly theatrical ways to try and embarrass and intimidate Microsoft's witnesses. At breaks in the trial every day, the Government turns the courthouse steps into ground zero for its spin game knowing full well its legal strategy had failed before it ever left the gate.

Despite their shaky legal case, the press has recently reported that Justice Department officials and the Attorneys General from 19 states suing Microsoft are already discussing post trial "remedies." Before any decision has been made in the case, Antitrust Division officials are contemplating punishments. Before they have proven any consumer harm, they are devising consumer remedies. Before they have made closing arguments, they have coined a cute catch phrase for their planned breakup of the company. They call the tiny remnants of the future broken Microsoft they already have the hubris to predict "Baby Bills."

Whatever happened to letting justice take its course? Are we to assume that the outcome of the trial is a foregone conclusion? Why are we wasting taxpayer money on attorneys fees when all that is really going on is a show trial?

On the other hand, Microsoft has put on a very strong record in this case in areas relevant to the law and the claims brought by the government: trying law, foreclosure of product through exclusionary contracts and the fundamental element of consumer harm.

The facts so far in the record show Microsoft to be on firm legal ground in all these areas. The Appeals Court verified there was no illegal tying. James Barksdale, Netscape's CEO, admitted that Microsoft did not foreclose his company from the market. And the government's final witness, economist Franklin Fisher, testified that, on balance, Microsoft has not harmed consumers.

As Attorney General for Washington State, I argued 14 cases before the United States Supreme Court. My focus as Attorney General was consumer protection. I want to assure my colleagues today that, had this case

been presented to me as an Attorney General, I wouldn't have given it a second glance because there is no evidence whatsoever that Microsoft has harmed consumers.

But Joel Klein doesn't care about protecting consumers. He cares about protecting companies that cannot compete on their own. In a recent speech, he stated that it was the job of antitrust to "reallocate resources between the producer and the consumer."

Really? To reallocate resources? That's what antitrust is for?

Well, I agree with Mr. Klein's assessment on one count: this trial was designed precisely to reallocate resources—from Microsoft to Microsoft's competitors. And why would the Department want to do that? Perhaps because the resources the Administration really wants to reallocate are California's electoral votes into AL GORE's column come the year 2000. Just this past Tuesday the San Francisco Chronicle said that Mr. GORE "unabashedly acknowledged that he has lavished attention on California, which carries a rich cache of votes—and campaign donors. According to his staff, the Vice President has visited the State 53 times since taking office five years ago." In a separate story, the Chronicle quotes the Vice President as saying, "California is the biggest, most important State. . . . It deserves the most attention, and I'm going to make sure it gets it."

So, needing California in 2000, lusting for a return to the regulatory excess needed to feed the insatiable maw of big government, and wanting to throw trial lawyers some fresh meat, but lacking anything closely resembling a credible legal case, what have Klein and Co. done? They've demonized the most innovative, extraordinary world-changing engine for progress that this world may ever have seen. As my colleagues think about the implications of our failure to protest this demonization, let's just take a closer look at the "demon" itself and see what innovations the forces of government regulatory mediocrity are about to foreclose.

Microsoft's economic contributions already are common knowledge, and I've just provided the State-by-State breakdown, but here's a refresher: In the fiscal year ending June 30, 1998, Microsoft's net revenues were \$14.48 billion—56 percent of which came from international trade. In my home State of Washington, by the end of 1998 Microsoft employed almost 16,000 workers. Nationwide the figure was almost 20,000—and that's without factoring in the number of jobs represented by the 120,000 plus companies on the Partners' map I've just shown my colleagues. Microsoft generates jobs worldwide as well, with subsidiaries in nearly 60 countries, from Austria to Vietnam, Costa Rica to the Czech and Slovak Republics, Saudi Arabia to South Africa.

National productivity and workplace efficiency? The value provided is very

nearly beyond our ability to calculate. Ironically, Windows, the product portrayed by Klein and cohorts as anti-consumer, was purposely designed by Microsoft to support and encourage the greatest number of innovations possible by independent software programmers, who need a uniform, broad-based platform on which to write code that will be economically viable in smaller niche markets. The result has been an enormous proliferation of software designed to fill every imaginable consumer need.

How about other, less obvious innovations this company is responsible for? Let's start with products that just make life better for ordinary people, like WebTV, which lets people use their television sets to connect to the Internet. That's innovation for the better. And there's also Windows' accessibility features—magnifiers, high-contrast schemes, special keys and sound enhancements among many—that make computers easy to use for many people with disabilities—opening doors that previously were locked tight. Education? Microsoft donates millions of dollars in cash and software to schools and libraries every year.

Microsoft was recently voted the 3rd most admired company in Fortune's annual poll. That's some demon the Justice Department has targeted. It had better hurry and shut Microsoft down completely or the next thing you know Microsoft will help lower the cost of computing even more or spawn even greater technological and cultural innovations that will make our lives easier and better, and then where would we be?

Mr. President, irony aside, there is no aspect of this case that does not offend me.

As a lawyer, I have nothing but contempt for the flaccid PR case hoisted feebly in Judge Thomas Penfield Jackson's court by the government's inquisitors.

As a former Attorney General who left a solid legacy of consumer protection, I am appalled at the Orwellian double-speak government lawyers spew forth as they pretend to act on behalf of consumers while simultaneously seeking to dictate what they may consume.

As a free-market advocate of decades-long standing, I am chagrined at the "Damn-the-consequences-full-speed-backward!" attitude of those who would regulate just for regulation and bureaucracy's sake.

As a Senator, I am nonplused at the Administration's gall in asking for a 16 percent increase to beef up its attack-dog department so that it may continue mauling the greatest engine for revenue generation we've seen in many a year.

As a Washingtonian, I am incensed at the blatant attempt of AL GORE's wannabe administration to court my state's electoral votes even as his current Administration's Justice Department orchestrates the destruction of

Washington's superb economic engine in favor of Silicon Valley's greater financial and electoral prize.

Yes, this case offends me in every sense of the word, as it should offend every one of my colleagues. I call on each of them today to recognize what is at risk here, to rise above partisan posturing, to recognize the outrageous nature of the Justice Department's power grab, and to join me in stopping it.

Because that is precisely what I intend to do: I will seek to stop the Justice Department's grab for more funding through the Appropriations Committee when there are basic law enforcement needs going unfunded. I intend to conduct Congressional oversight authority of the Department's out-of-control antitrust division in every committee in which it is appropriate, and I will seek out every other legitimate vehicle to provide Congressional control of this out-of-control, time-warped throwback to the 60s.

I call on my colleagues to join me today in demanding accountability from a Justice Department that asserts consumer harm in the presence of consumer bounty; that has sought to destroy competition in the name of competition; and that now seeks to increase its own battle force with taxpayer dollars for an undertaking that taxpayers do not want undertaken.

This is a Justice Department out of control, and not only with respect to Microsoft. They are also going after Visa and MasterCard. Their Equally hidebound colleagues at the FTC are suing chip manufacturer, Intel, and investigating router manufacturer, Cisco. Most of absurd of all the Department of Justice of the United States of America has accused the country's leading manufacturer of false teeth (Dentsply) of illegally maintaining a monopoly. No wonder Justice is asking for more money and more lawyers; it needs to find more teeth to feed its rapidly burgeoning lawsuit appetite.

Mr. President, the Department of Justice seeks to fix what is not broken, to intervene where innovation has been the unchallenged king, and to shunt off to a dead-end track the principal engine of America's technological leadership in the world.

The Department of Justice, and not Microsoft, must be stopped.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. ROBERTS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

Mr. ROBERTS. Mr. President, Senator KERREY, the distinguished Senator from Nebraska, under the previous order has asked for 20 minutes. We are to share that time. I ask unanimous

consent I may be now recognized for 20 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Kansas is recognized.

Mr. ROBERTS. I thank the Chair.

(The remarks of Mr. ROBERTS and Mr. KERREY pertaining to the introduction of S. 529 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. AKAKA addressed the Chair.

The PRESIDING OFFICER. The Senator from Hawaii is recognized for 5 minutes.

REDUCING CLASS SIZE

Mr. AKAKA. Mr. President, I rise in support of an amendment to be offered by my colleagues from Washington and Massachusetts, Senators MURRAY and KENNEDY, to S. 280, the Education Flexibility Partnership Act of 1999. The amendment represents a true investment in education, as well as in the future of our Nation and my State of Hawaii.

Built on a bipartisan agreement passed last year, the amendment seeks to reduce class size in early grades through the hiring of additional well-qualified teachers. This would mean more individualized attention for students from their teachers, increased learning in the basics that will immeasurably help them in future grades, and a better chance at success from an early age.

I also support other amendments to be offered to S. 280. One will be offered by my colleague, the senior Senator from New Jersey, Mr. LAUTENBERG, regarding an equally vital school modernization initiative. I have spoken in support of this initiative in the past. This plan would finance the building and renovation of public schools through tax credits in lieu of interest on bonds. Hawaii would receive tax credits to support \$50 million in school modernization.

The other amendment that will be offered by Senator BOXER to help communities fund afterschool programs for kindergarten, elementary, and secondary school students will be one that I will support. This will help keep students off the streets after school, for too many youths in my State are left with nothing to do but turn to drugs, alcohol, gangs and other destructive behaviors. And this happens also in other States. These amendments have my full support.

Now I would like to focus my remarks on the class size amendment. I commend my colleagues for supporting the first installment of the 7-year class size reduction proposal last year. We passed \$1.2 billion in 1998 to hire 30,000 teachers. Under this spending, Hawaii will receive more than \$5.6 million. We must pass the Murray-Kennedy amendment to finish the job and assure that the teachers hired under last year's downpayment will continue to be funded.

This amendment would provide \$1.4 billion in fiscal year 2000 to hire 38,000 teachers, which would give Hawaii nearly \$7 million for 178 teachers. So this is something that Hawaii really looks forward to.

Students in my State need these well-qualified, well-trained teachers. I hear from students, parents, and teachers alike that classes are too large. The average size of a class in Hawaii is in the mid-twenties. However, research shows that the optimum number of students in a class, particularly lower grades, is in the mid- to upper-teens.

Among other problems, larger classes create discipline problems, especially in communities with large numbers of at-risk children. If we want to give our students the best possible chance to learn, they need smaller classes and teachers who are able to give them enough personal attention.

In addition to helping students, this amendment would also help Hawaii's teachers. As a former teacher, I have taught both small and large classes. I have taught in different kinds of systems. I know when students are grasping ideas. And we know when they are not. One of the most rewarding things a teacher can experience is to see the faces of students light up when they realize they have learned something new. When there are too many students in a class and only one teacher to supervise them, the result is a difficult and poor learning environment.

Mr. President, I hope my colleagues on both sides of the aisle will join me in voting for this class size amendment. It makes sense to focus our efforts this way on students during their early grades, because these represent some of the most vital years in a child's educational development. We must give our children a rock-solid foundation in the basics so they may continue to build a strong base of knowledge throughout their educational history. We know that well-educated children will mean a great citizenry for the future of our country.

I thank my colleagues, Senators MURRAY and KENNEDY, for giving me this opportunity and this chance to speak on their amendment at this most important time in the history of our country.

Thank you very much, Mr. President. I yield back the remainder of my time.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

ORDER OF PROCEDURE

Mr. ABRAHAM. Mr. President, I am here today along with Senators SESSIONS and LEVIN to introduce a very important piece of legislation. I wonder if I could obtain unanimous consent so we might have the speaking in the order in which I would introduce the legislation. Then, after I finish speaking with respect to the legislation, Senator SESSIONS and then Senator LEVIN, in that order, would also

have the opportunity to speak to this bill.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator has 15 minutes.

(The remarks of Mr. ABRAHAM, Mr. SESSIONS, and Mr. LEVIN pertaining to the introduction of S. 531 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEVIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EDUCATION FLEXIBILITY PARTNERSHIP ACT OF 1999

Mr. BAUCUS. Mr. President, I want to state very simply but strongly and unequivocally that I support S. 280, the Education Flexibility Partnership Act, and I support it very strongly. There is a very simple truth. That is, we need to trust our parents, trust our teachers, trust our local school boards. We should do everything in our power to unshackle our children from binding Federal Government-mandated rules that might make sense in Manhattan, NY, but not in Manhattan, MT.

Two weeks ago I had the honor of addressing the Montana State legislature, and when I spoke I told them that the time has come to bring the promise of world-class education to every Montanan. I daresay that virtually everyone in this body has made the same statement, because he or she believes it very deeply, when speaking to his or her own legislatures back in their own States or to any group whatsoever that is interested in education. I believe very deeply we must do that.

I also believe we need to ingrain that ethic into the hearts and minds of those who care about education all across our country. Indeed, it is similar to the environment. We are the stewards of our children's learning, and our future as a nation very deeply depends on our willingness to invest in them and our teachers and our schools all across our country.

We have a moral responsibility to leave this Nation's children prepared to meet the challenges ahead. That challenge takes a unique form when we talk about meeting the standards of rural States. Nearly 40 percent of the children who go to school in America every day go to a rural school in a small town, yet somehow we as a nation invest only 22 percent of our total education funding in these students. Rural students are being shortchanged by a ratio of 2 to 1. I will work hard this year to see that every student in America, whether in urban America or in rural America, is provided for fairly and equally.