

Original Message

From: Bill Gates
Sent: Tuesday, December 01, 1998 7:13 AM
To: Executive Staff
Subject: AOL-NSCP and why consumers shouldn't pay for browsers

A lot of people have asked me about the AOL/Netscape merger. It's certainly paradoxical, given the DOJ case.

The DOJ must be VERY dismayed at this merger.

It will finally make people question why the DOJ is trying to raise the price of browsers above the competitive price, which is zero. It will finally make people question why the DOJ is attacking the browser work we did that benefited consumers through integration and innovation. Like almost all browser software, AOL's access software has always been free. AOL will distribute Netscape browser software for free to its 20 million instant messaging customers, and sooner or later to all its online service customers too. Our work in browsers made the business more competitive and consumers clearly benefited as browsers became free as they should be (and as they used to be, before Netscape gained a big share).

We decided a long time ago that Web browsing software should be part of a modern, well-designed operating system - this approach benefits consumers by giving them a single, simple interface through which to access all types of information, and by making it easier to use the Web with other applications. We also decided that, just like the many other features that are now built into Windows, there would be no extra charge for our browser technology. That makes business sense - one payoff for Microsoft comes through making Windows even more appealing to consumers. Just as consumers now prefer their car to come with an integrated, easy to use audio system, most want their PC operating system to include integrated, easy to use Web browsing technology.

Why is Netscape worth \$4 billion despite making its browser available for free? The answer is that browsers - whether they come as part of an OS or standalone - generate so much advertising revenue that you maximize revenue by giving them away free to drive usage. Jim Clark remembers that I made this point and the point about integration in the Fall of 1994, before Netscape came out with their first product. If there is competition the price will be zero. Browsers are like network TV. The traffic alone makes it a great business to make a popular browser even without charging users. There is nothing predatory about pricing a product at a profitable price. In fact, it's called the marketplace at work, and it helps consumers.

Netscape and now AOL has an incredible ability to get its product into the market, including the use of the Internet itself. No one has "foreclosed" Netscape from distributing its software. Netscape's success is proof of how open the software industry is to new competition. In how many segments of the economy can a startup grow to a market valuation of \$4 billion in only four years?

Yet the claim that Netscape was "foreclosed" from distributing its software is not just the center of the DOJ case - it IS the DOJ case.

The history here is very instructive. When we first included browser capabilities in Windows they did not get much use. Netscape continued to have over 80% share and



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there was no pressure on its price. Only when our browser won the overwhelming majority of all reviews did our share move up and Netscape have to come back down to a competitive price. It took a great deal of innovative work for us to not only catch up but move ahead in the browser business and we can be very proud of our contributions on behalf of consumers.

Microsoft's inclusion of Internet standards in Windows was pro-competitive. Imagine how people would have reacted if we had NOT included Internet standards like TCP/IP or HTML in Windows. Our old "help" format was proprietary and we got rid of it. Our track record of working with the standards group on HTML is the best of any company.

The ironies in this case are quite amazing. The DOJ meets with our competitors in their homes, and at dinners with all of our competitors present, and discusses what they can do against us. Perhaps these cozy relations will make it easier for AOL to get mergers such as Mirabilis, CompuServe and Netscape approved. The DOJ hasn't seemed to notice that the #1 gateway to the Internet (AOL) bought the #2 gateway to the Internet (CompuServe), and raised prices immediately following government approval of the merger. The DOJ hasn't seemed to notice that our business is more competitive than ever with many strong attacks on the Windows business.

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TOTAL P. 02

From: Brian Shafer (Intl Windows)
Sent: Friday, December 04, 1998 11:20 AM
To: Robert Bennett; Yusuf Mehdi
Subject: FW: AOL-NSCP and why consumers shouldn't pay for browsers

FYI

FDWS Deleted

OTU if you want to forward to Yteam...note it is already public

-----Original Message-----

From: Greg Shaw (Corp. PR)
Subject: FW: AOL-NSCP and why consumers shouldn't pay for browsers

The following e-mail was sent to executive staff this morning from Billg. I have provided this to Ted Bridis of AP who has been working on a story about pricing and browsers. He even asked Boies about it today at the mid-day break. Ted became interested in the subject as a result of the interview he did with Bill during Comdex. So giving this to Ted was a followup to his interview and responsive to his story.

Reporters will likely be upset that we just gave it to AP. Calls should go to Adamso. He will explain that it's an internal mail not intended for broad distribution, but he will give it to reporters if they ask for it and have some use for it.

We don't need any talking points for the mail. It speaks for itself.

thanks

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From: Greg Shaw (Corp. PR)
Sent: Thursday, December 03, 1998 1:41 PM
To: Bill Gates; Paul Maritz; Tod Nielsen; Mich Mathews
Subject: RE: AOL-NSCP and why consumers shouldn't pay for browsers

I need to send you all of the coverage. It was the main focus of the The Washington Post story for the day, it was a sidebar in the NYT, It was the entire mid section of the WSJ story for the day and it appeared in all of the online news stories.

I disagree that AP was not a good distribution channel. It served as a press release to everyone else and it is THE story that major metro papers run around the country and the world for that matter.

It's a dilemma. If we give it to everyone it looks cooked and no one will cover it. If it appears as a breaking story everyone feels they have to cover it.

You should know that as soon as AP broke we got calls from most of the major news outlets to whom we provided a copy and they wrote it. Some were not interested but not many

-----Original Message-----

From: Bill Gates
Sent: Thursday, December 03, 1998 12:46 PM
To: Greg Shaw (Corp. PR); Paul Maritz; Tod Nielsen; Mich Mathews
Subject: RE: AOL-NSCP and why consumers shouldn't pay for browsers

I am really surprised we restricted the distribution of this so much.

My comments are the best tool we have to shift the dialog and get people to understand who gave consumers the fair price for browsing.

Just putting in AP doesn't have much impact I don't think.

At least we should give it to MAGAZINE people also.

-----Original Message-----

From: Greg Shaw (Corp. PR)
Sent: Tuesday, December 01, 1998 10:18 AM
To: Bill Gates; Paul Maritz; Tod Nielsen
Subject: FW: AOL-NSCP and why consumers shouldn't pay for browsers

fyi

Privileged Material
Redacted

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EXHIBIT A

United States District Court

NORTHERN DISTRICT OF CALIFORNIA

United States of America v. Microsoft Corporation
and
State of New York, ex rel, Attorney General
Dennis C. Vacco, et al v. Microsoft Corporation

SUBPOENA IN A CIVIL CASE

CASE NUMBER:
Actions Pending in the United States District Court for the District of Columbia
1:98CV01232
1:98CV01233

TO: Microsoft Corporation
c/o John Warden, Esq./Michael Lacovara, Esq.
Sullivan & Cromwell
125 Broad Street
New York, NY 10004

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify at the taking of a deposition in the above case

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION Department of Justice, Antitrust Division 450 Golden Gate Avenue - Suite 10-0101 San Francisco, CA 94102	DATE AND TIME April 12, 1999 at 10:00am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

See attached Schedule of Documents.

PLACE	DATE AND TIME
-------	---------------

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedures, 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) John F. Cove, Jr., United States Department of Justice, Antitrust Division Attorney for Plaintiff United States and on behalf of Plaintiff States	DATE AND TIME April 1, 1999 3:00pm
---	---

ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER

John F. Cove, Jr., United States Department of Justice, Antitrust Division
450 Golden Gate Avenue, #10-0101, San Francisco, CA 94102 (415) 436-6660

PROOF OF SERVICE

SERVED	DATE April 1, 1999	PLACE Microsoft Corporation c/o John Warden, Esq./Michael Lacovara, Esq. Sullivan & Cromwell, 125 Broad Street, New York, NY 10004
SERVED ON (PRINT NAME) John Warden, Esq.		MANNER OF SERVICE Via Facsimile at (212) 558-3588
SERVED BY (PRINT NAME) Joli M. Wilson		TITLE Paralegal

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on April 1999
DATE

Joli M. Wilson
SIGNATURE OF SERVER

ADDRESS OF SERVER

United States Department of Justice, Antitrust Division
450 Golden Gate Avenue
San Francisco, CA 94102

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

© PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it
(i) fails to allow reasonable time for compliance;
(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except

son, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
(iv) subjects a person to undue burden.

(B) If a subpoena
(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will reasonably be compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

DEFINITIONS

1. "And" and "or" are intended to have both conjunctive and disjunctive meanings.
2. "AOL" means America Online, Inc, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.
3. "Document" has the broadest meaning accorded to it by Rule 34 of the Federal Rules of Civil Procedure, and includes but is not limited to all of the matters defined in Rule 1001 of the Federal Rules of Evidence. It also includes each computer file and written, recorded, and graphic material of every kind in the possession, custody or control of Microsoft, electronic correspondence and drafts of documents, electronic mail messages, copies of documents that are not identical duplicates of the originals, and copies of documents the originals of which are not in the possession, custody or control of Microsoft. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Unless otherwise specified, the term "document" excludes bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature and also excludes architectural plans and engineering blueprints.
4. "The Litigation" refers to the actions captioned *United States v. Microsoft Corp.*, CA No. 98-1232 (TPJ) and *State of New York ex rel. Attorney General Dennis Vacco, et al. v. Microsoft Corp.*, CA No. 98-1233 (TPJ), pending in the United States District Court for the District of Columbia.

5. "Microsoft" means Microsoft Corporation, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.

6. "Netscape" means Netscape Communications Corporation, each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them.

7. "Sun" means Sun Microsystems, Inc., each of its predecessors, successors, parents, divisions, subsidiaries, and affiliates, each other person or entity directly or indirectly, wholly or in part, owned or controlled by it, each partnership or joint venture to which any of them is a party, and all present and former officers, directors, employees, agents, consultants, or other persons acting for or on behalf of any of them

8. "Microsoft Software" means any software developed, licensed, and distributed, or considered for development, licensing, and distribution by Microsoft.

9. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, or other business, legal, or governmental entity.

10. "Relating to" means discussing, describing, referring to, reflecting, containing, analyzing, studying, reporting on, commenting on, evidencing, constituting, setting forth,

considering, recommending, concerning, or pertaining to, in whole or in part.

11. “Third Party” means any person other than the United States, any State, Microsoft, or any officer, director, employee, agent, consultant, or other person acting for or on behalf thereof.

12. “Transactions” means the acquisition of Netscape by AOL, and the “Strategic Alliance” and similar agreements executed by AOL, Netscape, and/or Sun.

INSTRUCTIONS

1. If documents responsive to this Subpoena previously have been submitted to the Antitrust Division or any of the plaintiff States and have not been returned by the Division or those States (or destroyed at your direction or pursuant to judicial order), you need not reproduce such documents. Please identify all documents previously produced, including the date of submission and the document control number or other identification of where in that submission the documents can be found.

2. All drafts and non-identical copies of responsive documents should be produced.

3. For each document or portion thereof withheld under a claim of privilege, submit a sworn or certified statement from Microsoft’s counsel or one of Microsoft’s officers identifying the withheld document by author, addressee, date, number of pages, subject matter, and document control number; specifying the nature and basis of the claimed privilege and the paragraph of this Subpoena to which the withheld material is responsive; and identifying each person to whom the withheld material was sent and each person to whom the withheld material or its contents, or any part thereof, was disclosed. Denote all attorneys identified with an asterisk.

4. This Subpoena shall be deemed continuing as provided in the Federal Rules of Civil Procedure, so as to require further and supplemental production if additional documents called for by this Subpoena are obtained or created by Microsoft between the time of the Subpoena and the time Microsoft completes its testimony at trial.

SCHEDULE OF DOCUMENTS

1. All documents relating to any business analyses and assessments of, and predictions concerning, the Transactions, including but not limited to:
 - a. the potential effect, or lack of effect, the Transactions will have on (i) Microsoft or Microsoft's business, (ii) operating systems, (iii) middleware (including web browsing software), or (iv) any other software development platforms;
 - b. the potential effect, or lack of effect, the Transactions will have on the market share, usage, or pricing of any Microsoft software product;
 - c. the potential effect, or lack of effect, the Transactions will have on (i) the creation, distribution, or use of web browsing software, (ii) the number of subscribers to online services, or (iii) the amount of traffic to Internet portal sites;
 - d. the potential effect, or lack of effect, the Transactions will have on any contract, business arrangement, or other dealings between Microsoft and AOL, including on AOL continuing to use Microsoft's Internet Explorer in client software for AOL's AOL-branded and CompuServe online services; on any discussion, consideration, or decision to renew, extend, alter, change, or cancel Microsoft's agreement(s) with AOL; or on Microsoft continuing to distribute AOL access or client software

with Windows;

- e. the potential effect, or lack of effect, the Transactions will have on AOL using, or considering the use of, Netscape or Sun web browsing software in any future AOL client software, or on AOL's distribution of such software;
- f. the potential effect, or lack of effect, the Transactions will have on the Litigation or any aspect of the Litigation;
- g. all communications and correspondence within Microsoft or between Microsoft and any third-party relating to any business analyses and assessments of, and predictions concerning, the Transactions; and
- h. all actual or potential Microsoft responses, reactions, plans, strategies, or other actions relating to the Transactions.

EXHIBIT B



U.S. Department of Justice

Antitrust Division

San Francisco Office

450 Golden Gate Avenue

Box 36046

San Francisco, California 94102

Telephone (415) 436-6660

Telecopier (415) 436-6687

June 15, 1999

VIA FACSIMILE (202)293-6330

John Warden, Esq.
Sullivan & Cromwell
1701 Pennsylvania Avenue, N.W.
Washington, DC

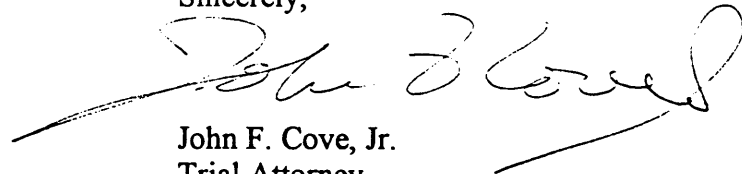
Re: *United States v. Microsoft Corp.*

Dear Mr. Warden:

One of the trial exhibits Microsoft used yesterday, document numbered MS98 0241166, contains a message from Greg Shaw, a Microsoft public relations person, to several Microsoft executives, none of whom are lawyers, which has been redacted on the grounds of privilege. Please fax us an unredacted copy of this document today at (202)307-1454.

This prompts me to raise a related issue. The plaintiffs have not received a privilege log for documents withheld or redacted on the grounds of privilege for any of Microsoft's document productions in response to the plaintiffs' trial subpoenas. Please provide us with a privilege log for any subpoenaed documents withheld on the grounds of privilege and not previously listed in a privilege log by COB today.

Sincerely,



John F. Cove, Jr.
Trial Attorney

cc: Stephen Houck, Esq.

EXHIBIT C



U.S. Department of Justice

Antitrust Division

San Francisco Office

450 Golden Gate Avenue

Box 36046

San Francisco, California 94102

Telephone (415) 436-6660

Telecopier (415) 436-6687

June 15, 1999

VIA FACSIMILE (202)293-6330

Michael Lacovara, Esq.
Sullivan & Cromwell
1701 Pennsylvania Avenue, N.W.
Washington, DC

Re: *United States v. Microsoft Corp.*

Dear Michael:

This letter is to confirm the request that I made in our telephone conversation today regarding my earlier letter to John Warden.

You indicated that you did not believe that Microsoft had sufficient time to prepare the privilege log called for by the trial subpoenas, and that you would have someone in Redmond call me to discuss the logistics. You also indicated that you believed that MS98 0241166 was properly redacted on the grounds of attorney-client privilege because Mr. Shaw was forwarding an email written by a lawyer, and that you were not willing to provide us with an unredacted copy.

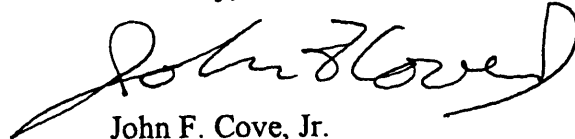
I indicated that I was willing to discuss the logistics of the production of a complete privilege log, but requested that you provide a written claim of privilege, which should include all the information relating to the claim of privilege called for by the subpoena, for the material redacted in MS98 0241166 by COB today, and also that you bring an unredacted copy of MS98 024116 to court tomorrow, in the event that the parties determined that this was a dispute that needed to be resolved by the court. You suggested that you were not willing to do so in the absence of a motion.

I request that you reconsider your position. It is clearly not an undue burden to prepare a written claim of privilege for a single document by COB today. This is not unreasonable since, as you know, MS98 0241166-67 is a variation on Defendant Exhibit 2533, which Microsoft attempted to introduce yesterday, and may well shed light on the questions that Mr. Warden asked about how Mr. Gates' email came to be in AOL's files. Once we receive the information called for by the subpoena relating to the claim of privilege for this one document, we will decide whether a motion is warranted. In light of the short time remaining in the trial, we may make any motion orally tomorrow morning so that we can resolve all the outstanding issues relating to Mr Colburn's testimony at that time. Having the unredacted email available will not

Michael Lacovara, Esq.
June 15, 1999
Page 2

prejudice your client's substantive rights and will expedite the resolution of any unresolved issues.

Sincerely,

A handwritten signature in black ink, appearing to read "John F. Cove, Jr.", written in a cursive style.

John F. Cove, Jr.
Trial Attorney

cc: Stephen Houck, Esq.

EXHIBIT D

SULLIVAN & CROMWELL

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June 15, 1999

VIA FACSIMILE

John F. Cove, Jr., Esq.,
United States Department of Justice,
325 Seventh Street, N.W.,
Room 615,
Washington, DC 20530.

Re: *United States v. Microsoft*

Dear John:

Let me begin my response to your second letter of today by correcting one of its more obvious errors. I did not say that Microsoft had not "had sufficient time to prepare [a] privilege log." What I said was that it was unreasonable for you to wait more than two months after the documents had been produced to demand a privilege log, to do so in the middle of the trial (and with about a week until its conclusion), and to demand production by "COB today." I also said that I would refer your request to the lawyers in Redmond who handle such matters and would have them call you. That I have done and you should expect a call.

Your asserted justification for asking me more formally to articulate a basis for the privilege claim is thin, given that there is no document in evidence. I suspect that what you are doing is attempting to manufacture a record so that you may make something of this in the morning. I think this entire matter is, to coin a phrase, nothing more than a trial stunt, and I shall not facilitate it. Lest there be any lack of clarity in my position, here it is:

1. The document about which you inquire is not in evidence and was not offered in evidence.

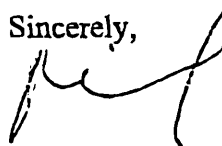
2. The questions Mr. Warden asked about how a *different* document (although one embedded, in a different form, in the document about which you now inquire) came to be in AOL's files were prompted by a foundation objection from your colleague, Mr. Boies. Mr. Warden was well within appropriate bounds of advocacy and the principles of evidence in seeking to ascertain whether the witness could assist in providing foundation for the document. He could not, and the document was not admitted.

3. I have stated our basis for asserting a privilege claim as to parts of the document, and you admitted when we spoke (a) that you may well have misread or misunderstood the document when you sent your initial letter this morning, and (b) that you had no basis to challenge my explanation as to the privileged nature of the redacted portions of the document. Your more recent letter does not alter the situation in any material respect.

4. To the extent that it implies that Mr. Warden had any knowledge as to the way in which DX 2533 came to be in AOL's files, your letter is unfounded and offensive. If *you* have some knowledge on that subject, please share it with me.

I shall be candid, John. I think you are fishing, and the sense of urgency reflected in your letters is a contrivance. If you believe you have *any* credible basis for challenging the privilege designations, proceed as you have done before – file a motion, give Microsoft the opportunity to respond and we shall let the Court decide.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Lacovara". The signature is fluid and cursive, with a prominent loop at the end.

Michael Lacovara