THE CENTER FOR THE
MORAL DEFENSE OF CAPITALISM

VIA FAX

January 28, 2002

From: **Nicholas Provenzo**
Chairman
Center for the Moral Defense of Capitalism

To: **Antitrust Division**
U.S. Department of Justice
601 D Street NW
Suite 1200
Washington, DC 20530-0001

Re: **Microsoft Settlement**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the Center for the Moral Defense of Capitalism respectfully submits its evaluation of the proposed Final Judgment resolving *U.S. v. Microsoft Corporation* (Civil Action No. 98-1232) and *State of New York ex. rel Attorney General Eliot Spitzer, et al., v. Microsoft Corporation* (Civil Action No. 98-1233).

The mission of the Center for the Moral Defense of Capitalism is to promote the social welfare of the nation by presenting to the public a moral foundation for individualism and economic freedom based on a philosophical analysis of humanity and human nature. Specifically, we seek to apply Ayn Rand's philosophy of Objectivism to the understanding of human action and human relationships.

As the cornerstone of a free, capitalist system, we argue that human life requires thought and effort and that the free market springs from the trade of one's thoughts and efforts with others. We make the argument that human minds and bodies must be left free of coercion, that all human interaction must be voluntary and that the initiation of physical force must be banished from human relationships. We see a proper government as the agent of its citizens, charged with one mission: the use of *retaliatory* physical force in defense against the *initiation* of physical force.

Our organization has followed the Microsoft antitrust case from its initial filing—we have opposed the case from the outset, seeing it as an abridgement of the freedom of production and trade and an interference with the right to acquire and possess property. We disagree with the essential factual component of this case—that Microsoft's integration of its Internet Explorer Web browser with its Windows operating system was a coercive act against Microsoft's competitors and customers. Instead, we see a company that according it its evaluation of the marketplace saw the commercial value of product integration and acted accordingly. In exercise of Microsoft's right to control its property, the firm set terms for the sale of that property that it believed was in its own self-interest. Microsoft's subsequent commercial success after this integration affirms the wisdom of Microsoft's actions—Microsoft's customers themselves chose to reward the firm with increased

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sales and increased market share. Rather than serve an impediment to the free market, Microsoft's actions personified them.

Yet, obviously, Microsoft's success has made it into the target of the government's wrath via the current antitrust case. Our organization closely followed the District Court case, writing several published evaluations of the case and its subsequent rulings (see Appendix 1 & 2). Our organization also participated in the US Court of Appeals for the District of Columbia Circuit appeals proceedings as an *amicus curie*. Our *amicus* brief relied on two major arguments in opposing the government's case: 1.) that the antitrust laws are unconstitutional laws that fail to provide with clear and concise guidance necessary to avoid sanctions under the law; and 2.) that the antitrust laws are unconstitutional laws because they require the government to initiate force against innocent citizens.

Today, our view of the Microsoft antitrust case and its proposed settlement is as follows: While we respect the desire of the parties to seek a resolution to this case, particularly that of Microsoft, which has had to endure a 3 ½ year crusade against its property rights and its right to conduct its business in a profitable manner, we are wary of any settlement that legitimizes any aspect of this unjust assault against a successful, innovative business.

We consider the case against Microsoft to have been defective at every level, from the fundamental claim that the entrepreneurial actions of a successful business are a threat against others, to the claim that a monopoly can exist where there is no legal barrier to entering a market, to the claim that the citizens of the United States are too ignorant or incompetent to exercise their individual power of choice when in the marketplace and therefore require the government to make their personal choices for them. We consider it a failure that the court saw no distinction between the earned success of a business in the free market and the coercive power of a government favorite and we consider it a failure that the court did not ultimately throw out the case against Microsoft.

Considering that this case was initial brought not at the insistence of individual consumers or with Microsoft's business partners, but at the insistence of Microsoft's unsuccessful competitors, this entire case reeks of business failures asking the government to step in and give them the commercial success they could not achieve in the marketplace. Failed businesses must not be allowed to set the rules for the markets in which they failed.

In evaluating the proposed settlement, we find that it specifically threatens the right to private property. A key component of the proposed remedy is a requirement that Microsoft make its source codes available to a government-sanctioned oversight committee, which in turn is supposed to ensure these same source codes are made available to non-Microsoft "middleware" producers, so that these companies can create products to compete with Microsoft. Since under the proposed judgment, the United States would retain the right to determine and enforce the scope to which these source codes are to be made available, the final judgment constitutes a *de facto* seizure of private property—the source codes—and its subsequent conversion to a public good. Such a taking is wholly incompatible with the Constitution of the United States.

Accordingly, we reject the notion that this settlement serves the public interest, or that any punishment of Microsoft for its business practices will be of benefit to any consumer. Eroding Microsoft's property rights serves no one. We hold that no antitrust case, including the Microsoft case can withstand rational scrutiny, and we ask that no sanction be placed on Microsoft as a result of its antitrust conviction.

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Appendix 1:
Judge Jackson's Findings of Fiction

By Dr. Edwin A. Locke, Ph.D.
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Judge Thomas Penfield Jackson has released his "findings of fact" in the Microsoft antitrust case. While his report did contain some correct information—such as the truism that a successful company tries to defeat its rivals—the central claims of his report are blatant falsehoods. Let us examine five of these fictions.

Fiction #1: Microsoft is a "monopoly." There is no such thing as a private monopoly. Only the government can forcibly prevent competitors from entering a market. Microsoft has attained dominance in the software industry, but dominance is not monopoly. Market dominance has to be earned through a long struggle, by providing better products and better prices than anyone else.

Dominant companies who falter (as did Xerox, IBM, General Motors and Kodak) will find their market share eroded, sometimes very quickly. There is no threat from these dominant players so long as their competitors are legally permitted to enter the field, invent new products, and combine with each other to gain the needed market power.

In a free market, a dominant position can only be sustained by continually providing new products and services that are better than other firms' products. Paradoxically, Judge Jackson recognizes this fact but condemns it. Microsoft's innovation, its continual product upgrades, its millions spent on research and development, are cited by Jackson, not as evidence that Microsoft has earned its position, but only as evidence of a conspiracy to "stifle" its competitors.

Fiction #2: Microsoft's "monopoly power" allows it to "coerce" its customers. A private company has no power to force consumers to do anything. Did Judge Jackson find that Microsoft threatened to beat people up or throw their bodies into the East River if they bought the wrong Web browser? Of course not. The only "leverage" Microsoft has is the leverage it has earned by producing a product that people want to buy.

This economic power, the power of voluntary trade, is fundamentally different from political power, the power of the gun. Yet Judge Jackson is eager to erase this distinction. Thus, such actions as upgrading a product to match the features offered by a competitor, distributing a product for free, or negotiating favorable terms with business partners—all of them normal and beneficial business practices—are presented by Judge Jackson as if they are a nefarious, mafia-like conspiracy to oppress the public.

Fiction #3: Microsoft harmed consumers. This is certainly news to the millions of people worldwide who value Microsoft products enough to make the company and its founders rich. Most

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bizarre is Judge Jackson's claim that Microsoft harmed consumers by giving away its Web browser, making it unprofitable for other firms to sell their browsers. Any sane consumer would be delighted to get a product for free rather than paying money for it. To speak of receiving free software as a "harm" is Orwellian doublespeak.

Fiction #4: Microsoft is a threat to consumers because it "could" raise its prices. Under this criterion, anyone could be prosecuted for anything. Do you own a kitchen knife? Then you *might* stab somebody—so should the government put you in jail?

Microsoft has the right to sell its product for any price it chooses—but anyone familiar with the history of business and with Economics 101 knows that market leaders have a selfish interest in keeping their prices low. Why? Because they make a lot more money by creating a mass market than by creating a product only the rich can buy. Henry Ford understood this. So did Bill Gates. Clearly, Judge Jackson does not.

The only basis for his conclusion is the caricature of the successful corporation as a vicious "Robber Baron" which, even if it is not "exploiting" consumer now, is merely waiting for the opportunity to do so.

Fiction #5: Blocking Microsoft's ability to compete will foster greater industry innovation. A private company, with no power over consumers but the power conferred by offering a useful product, is branded by Judge Jackson as dangerous. But far-reaching government intervention in the software industry, including the massive use of force to shatter Microsoft and control its business practices, is presented as an attempt to spur innovation. Only those who believe Al Gore invented the Internet could take this argument seriously.

What Judge Jackson really objects to is the fact that Microsoft defeated its competitors, i.e., that it was successful. The real meaning of his "findings of fact" is that the best brains must be crippled, so that lesser brains will not have such a hard time succeeding. He and the government prosecutors whose arguments he is echoing do not want to foster innovation; they want to sacrifice the best and the brightest in the name of egalitarianism. They want the playing field leveled by coercion so that no one can rise to the top.

What consumers need is an antidote to the fictions peddled by Judge Jackson: the recognition that businessmen have a right to succeed by trading their products in a free market.

Dr. Edwin A. Locke is Dean's Professor of Motivation and Leadership at the Robert H. Smith School of Business at the University of Maryland and is affiliated with UMD's Department of Psychology. An internationally renowned behavioral scientist, Locke's work is included in leading textbooks and acknowledged in books on the history of management.

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Appendix 2:
Altruism in Action: An Analysis of Judge Jackson's Finding of Fact and the Antitrust Assault on Microsoft

by Adam Mossoff
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United States District Court Judge Thomas P. Jackson is crystal clear in his recent "findings of fact": Microsoft is marked for destruction. But why does Judge Jackson want to punish one of the most successful corporations in American history? Because Bill Gates proclaimed that he wanted "to prove that a successful company can renew itself and stay in the forefront"[i]—and he proceeded to do just that.

By the early 90s, Microsoft had gained a dominant position in the software industry by creating Windows, the first commercially viable graphical operating system that could be used on PCs. But in the mid-90s, Gates realized that the Internet represented the next step in the ongoing computer revolution; thus, he created a business plan to "stay in the forefront" of this revolution. In so doing, he set into motion the same technological and commercial innovation that had led to Microsoft's leading market position in the first place.

Microsoft began by investing a staggering $100 million each year in Internet research and development, and in four years the company expanded its Internet division from only six people to more than one thousand. These investments, in the words of Judge Jackson, paid "technological dividends."[ii] (Paragraph 135) Microsoft developed a Web browser called Internet Explorer, and "after the arrival of Internet Explorer 4.0 in late 1997, the number of reviewers who regarded it as the superior product was roughly equal to those who preferred [Netscape's] Navigator." (Paragraph 135)

But Gates took Microsoft even farther. He integrated Internet Explorer into Microsoft's Windows operating system so that it would be easier to incorporate the fast-growing Internet into all aspects of personal computing. In fact, Judge Jackson partly acknowledges the groundbreaking work performed by Microsoft in this regard:

> The inclusion of Internet Explorer with Windows at no separate charge increased general familiarity with the Internet and reduced the cost to the public of gaining access to it, at least in part because it compelled

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> Netscape to stop charging for Navigator. These actions thus contributed to improving the quality of Web browsing software, lowering its cost, and increasing its availability, thereby benefiting consumers. (Paragraph 408)

Concurrent with its technological innovation, Microsoft put into practice novel business services and licensing arrangements. Just one of many examples addressed by Judge Jackson is the Internet Explorer Access Kit (IEAK), a service that permits an Internet access provider (IAP), such as America Online or Earthlink, to accept a license agreement on the Web and then download and customize Microsoft's Internet software. When Microsoft began offering this service in September, 1996, it was the first time an Internet access provider could

> create a distinctive identity for its service in as little as a few hours by customizing the title bar, icon, start and search pages, and "favorites" in Internet Explorer. The IEAK also made the installation process easy for IAPs. With the IEAK, IAPs could avoid piecemeal installation of various programs and instead create an automated, comprehensive installation package in which all settings and options were pre-configured. (Paragraph 249)

More than 2,500 access providers—representing more than 95% of the Internet subscriber market in the US—used Microsoft's IEAK service. (Paragraph 251) Notably, Netscape did not create a similar service until nine months after Microsoft introduced IEAK, and Netscape charged almost $2,000 for something Microsoft offered for free. (Paragraph 250)

Microsoft blended technological innovation with business acumen and thus offered its business partners an integrated package of new technology and new business opportunities. In exploiting these opportunities, Microsoft often offered "valuable consideration"—such as special discounts—to companies like Compaq, IBM, and Intel as an incentive to adopt its Internet Explorer and other Microsoft technology. In fact, Judge Jackson uses the term "valuable consideration" eight times to describe Microsoft's business agreements with other companies—leaving the honest reader to conclude that Microsoft's dealings were not some form of coercion but rather value-for-value trades.

For instance, Microsoft beat Netscape in developing a special type of browser that America Online (AOL) required for its Internet service. As a result, the two companies entered into several agreements in 1996. In exchange for AOL's commitment to use Microsoft's Internet software, Microsoft promised to provide AOL with unprecedented access to Internet Explorer source code, extensive technical assistance, "free world-wide distribution rights to Internet Explorer," an assurance "that future versions of its Web browsing software would possess the latest available Internet-related technology features, capabilities, and standards," and the placement of an AOL icon in a special folder on the Windows desktop. (Paragraph 288)

This relationship has been advantageous to both parties. Overall usage of Internet Explorer has risen dramatically, and as a result of this agreement AOL registered almost one million new users in a single year—11% of its total membership—through its icon on the Windows desktop. This fact alone prompted AOL to state in 1998 that its business arrangement with Microsoft was an "important, valued source of new customers for us." (Paragraph 302)

Microsoft's achievements should be held up as a model of how to create and maintain a highly productive, innovative company. Yet Judge Jackson is unable to view any of these facts in a positive light. While Judge Jackson recognizes many of the concrete facts that demonstrate

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Microsoft's productive achievement, he is incapable of praising the innovation *and* business acumen that led to Microsoft's success.

Instead, his descriptions are clouded by slanted, inflammatory terms that attribute vicious motives to Gates and his company. When Microsoft created new technology to compete with its rivals, Judge Jackson describes the company's motivation as "fear" and "alarm." When Microsoft offered incentives to its business partners, Judge Jackson decries this as the "quashing" and "stifling" of rivals. When Microsoft licensed its products only under conditions favorable to its long-term success, Judge Jackson describes these actions as "threats" and "force." (Judge Jackson uses variations of "threat" no fewer than twenty times and of "force" no fewer than sixteen times to describe Microsoft's actions.) When Microsoft refused to support its competition, Judge Jackson calls this "punishment." When Microsoft ingeniously melded technological and business strategies to convince consumers that its products were the best, Judge Jackson sees the company as "seizing control" and trying to "capture" the market.

Even worse than his slanted terminology are his substantive arguments, in which he sets up impossible standards according to which *no* successful business could escape prosecution. For example, Judge Jackson writes early in his ruling that:

> It is not possible with the available data to determine with any level of confidence whether the price that a profit-maximizing firm with monopoly power would charge for Windows 98 comports with the price that Microsoft actually charges. Even if it could be determined that Microsoft charges less than the profit-maximizing monopoly price, though, that would not be probative of a lack of monopoly power, for Microsoft could be charging what seems like a low short-term price in order to maximize its profits in the future for reasons unrelated to underselling any incipient competitors (Paragraph 65) (Emphasis added.)

Judge Jackson admits that it is not possible to tell whether Microsoft is in fact charging a monopoly price. Yet he dismisses this lack of evidence as irrelevant because Microsoft could simply be using low prices today in order to "capture" the market and charge exorbitant prices at some future date. In other words, Microsoft is a monopolist if it charges prices that are deemed "too high"—but it is also a monopolist if it charges prices that are too low. By virtue of its dominant position in the industry—that is, by virtue of its success—Microsoft is damned if it does and damned if it doesn't.

Judge Jackson's visceral antagonism to business is also revealed by his condemnation of Microsoft for winning the browser battle against Netscape when "superior quality was not responsible for the dramatic rise [in] Internet Explorer's usage share." (Paragraph 375) Note the implicit premise in this condemnation: If Microsoft hasn't produced a product that is technologically superior, then only commerce can explain its success. Jackson is repulsed by the notion that successful computer companies require both technological savvy and business skills; in his ideal world, Silicon Valley would be populated solely by computer scientists with nary an "alarming" venture capitalist or "threatening" businessman in sight.

Judge Jackson's praise for innovation, however, might seem to contradict his overall attack on successful businesses. Technological innovation is a source of business success, is it not? Although Judge Jackson recognizes that technological innovation causes businesses to succeed, he believes that this innovation has another, more legitimate, function. He writes:

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> In many cases, one of the early entrants into a new software category quickly captures a lion's share of the sales. ... What eventually displaces the leader is often not competition from another product within the same software category, but rather *a technological advance that renders the boundaries defining the category obsolete*. These events, in which categories are redefined and leaders are superseded in the process, are spoken of as "inflection points." (Paragraph 59) (Emphasis added.)

Innovation appeals to Judge Jackson not because it leads to the creation of wealth, but rather because it tends to tear down the market leader. He argues that the emergence of the Internet in the mid-90s was one such "inflection point." (Paragraph 60) Thus, the nature of his support for innovation explains his disgust with Microsoft's defeat of Netscape: By introducing its browser product sooner, Netscape *should* have replaced Microsoft—if only Microsoft had not engaged in the "vicious" commercial competition that ensured its continued leadership in the computer industry.

These beliefs ultimately lead Judge Jackson to conclude that Microsoft's "monopoly power" has "harmed consumers in ways that are immediate and easily discernible." (Paragraph 409) What are these alleged harms? Judge Jackson claims (wrongly) that the integration of Windows 98 and Internet Explorer does not allow employers to block employees from surfing the Web. He asserts that vast "confusion" reigns among consumers—but beyond one or two offhand references throughout the ruling, he never explains this vague allegation. Moreover, he claims, the integration of Windows and Internet Explorer has created slower computers with more bugs—as if computers are slower and less dependable than they were two years ago! One might regard such mythical "harms" as the laughable allegations of a Luddite—if they did not come from a judge who wields the coercive power of the federal government.

Regardless of how trivial these alleged harms may be, Judge Jackson seems sincerely to believe that Microsoft is acting as a vicious monopolist. Why? He answers this question in the last few sentences of his ruling: "Microsoft's past success in hurting such companies and stifling innovation ... occur for the sole reason that [other companies and their innovations] do not coincide with Microsoft's *self-interest*." (Paragraph 412) (Emphasis added.)

It takes Judge Jackson more than 200 pages, but in the end he names the essence of his disgust for Microsoft—and the essence of the antitrust laws. In so doing, Judge Jackson exposes the fundamental moral premise dictating his factual distortions, his fallacy-ridden arguments, and his illogical conclusions: a hatred for any form of self-interest.

The morality of altruism or self-sacrifice is often presented as a form of benevolence, as if it simply means being nice to other people. But the actual meaning of this philosophy is a hatred of success. Under this morality, anyone who achieves some extraordinary wealth or distinction owes it to his fellow men to *sacrifice* what he has earned—including giving away his whole fortune, as and when it is demanded by others. (This is essentially what has been demanded of Bill Gates.) But what about those who have not achieved anything? They are entitled to welfare programs, private charities, protective legislation, and a host of other unearned benefits to be paid for by those who have succeeded. In this system, anyone who earns success through his own effort is to be punished, while anyone who hasn't exerted any effort and hasn't attained any success is to be rewarded.

Far from standing for benevolence or good will, such a moral outlook stands for destruction. This code of sacrifice demands an assault on a Microsoft or a Bill Gates. By amassing so much money and achieving so much success, they must be shirking their duty to sacrifice to others. But it does

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not demand the destruction of the Netscapes of the world because, by virtue of having faltered, they are the "have-nots" who are entitled to benefit from the sacrifice of their more-successful competitors.

Note that the ultimate standard of this moral outlook is not the well-being of the poor, the weak, the downtrodden; has the welfare state ever achieved these aims? Instead, the goal is the sacrifice of the rich, the strong, and the powerful—not to achieve any positive aim, but simply to punish them because they are rich, strong, and powerful.

The altruist connection to antitrust is evident in the mere fact that Judge Jackson could have applied the antitrust laws against Microsoft *without finding any harm at all.* Although the ostensible purpose of antitrust is to "protect consumers" from alleged "monopolists," court decisions consistently belie this fiction. In one of the first cases defining the doctrine of antitrust, a large railroad trust defended itself against prosecution by arguing that its price-fixing plan resulted in lower prices for consumers. Since the stated purpose of the 1890 Sherman Antitrust Act was to protect consumers, and since consumers actually *benefited* in this case, the defendant logically concluded that the antitrust laws should not apply to its practices. The Supreme Court rejected this argument and ruled that the railroad trust was guilty. In an illuminating statement, Justice Peckham declared: "In this light it is not material that the price of an article may be lowered. It is in the power of the [monopolist] to raise it."[iii]

(Interestingly, Justice Peckham was an ardent conservative who was one of the principal advocates of "freedom of contract" in the 19th century—just as Judge Jackson was a Reagan appointee. This proves once again that conservatives are not reliable friends of freedom.)

Continuing to apply the underlying anti-success principle of antitrust, the Supreme Court ruled in 1968 that a newspaper company violated the Sherman Antitrust Act when it fired a distributor for charging rates above an allowable maximum price. The Court found that the newspaper "would not tolerate over-charging" of its customers, and that it even agreed to rehire the distributor if he "discontinued his pricing practice"—that is, if he charged lower prices. Nonetheless, the Court held that the benefit to consumers was irrelevant in finding that the newspaper company acted in "conspiracy" with its other distributors to set prices—thus its actions were "an illegal restraint of trade under Section 1 of the Sherman Act."[iv]

Harm to consumers has nothing to do with the purpose of antitrust. The antitrust laws are intended only to punish "power"—but since economic power is earned on the free market, this means that the purpose of antitrust is to punish successful business practices.

Antitrust case law is replete with examples of companies being punished, not for any alleged harm, but simply for having the acumen to remain successful in their industries. A ski resort in Aspen, Colorado, was not only found guilty in 1985 of violating the antitrust laws because it successfully competed against its only rival; it was also held to a "duty under antitrust law to help a competitor."[v] In the famous case against ALCOA in 1945, Judge Hand declared that "the successful competitor, having been urged to compete, must not be turned upon when he wins." But he contradicted himself in the very next paragraph, concluding that ALCOA

> insists that it never excluded competitors; but we can think of no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections, and the elite of personnel.vi

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ALCOA's ability and success, by Hand's reasoning, was the deciding factor for finding it guilty of violating the antitrust laws.

Given this legal context, Microsoft was doomed before it even set foot in the courtroom. The media, in an anti-Microsoft feeding frenzy, often highlighted mistakes made by Microsoft's counsel during the lengthy (and ongoing) trial. Yet Microsoft's attorneys could have performed flawlessly, and Judge Jackson would still have produced the same ruling.

The reason is that Microsoft is an extremely successful company; Gates is a unique combination of technological genius and businessman, reminiscent of earlier American giants like Thomas Edison. Thus, it was irrelevant how hard Microsoft's attorneys worked, or how much intellectual vigor they brought to their legal briefs and courtroom arguments. These things were irrelevant because no army of lawyers could hide a single, essential fact—the only fact necessary for applying the antitrust laws: Microsoft succeeds at what it does.

The punishment doled out for success is paralysis. Judge Jackson makes it clear that Microsoft must not be permitted to capitalize upon its well-earned success. *Because it has created values, it must now relinquish them.* Does it matter that Microsoft has earned its success by producing a better product, by offering better incentives to its business partners, and by providing better service to software developers and Internet access providers? No.

Such facts do not matter to a man who believes that a successful company has a moral duty to sacrifice to its lesser rivals—especially when that man has the legal power to coerce the company to obey its alleged duty. With every slanted term and with every absurd conclusion, Judge Jackson practically screams his unstated moral premise: Since Microsoft is a leader in the computer industry, it must sacrifice the values it has created because it has created them.

In his ruling, Judge Jackson claims to set out the objective facts underlying his impending application of the antitrust laws to Microsoft. But the only thing he manages to establish is his own animosity towards commercial success. What drives this animosity is the underlying moral justification for antitrust: altruism's hatred of success.

The basis for Judge Jackson's ruling is not any "monopoly" allegedly controlled by Microsoft; it is the monopoly commanded by the morality of altruism over our culture. That monopoly can be seen, unfortunately, in Bill Gates's sanction of his own destruction in a comment immediately after the ruling, in which he declares that "because of our success, we understand that Microsoft is held to a higher standard, and we accept that responsibility."[vii] As long as this moral monopoly remains unchallenged, legal doctrines such as antitrust will continue to punish successful businesses.

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[i] Bill Gates, The Road Ahead 64 (1995)
[ii] US v. Microsoft, No. 98-1233 (TPJ) (D.D.C. Nov. 5, 1999) (findings of fact). All references to the findings of fact hereafter will refer only to the paragraph number.
[iii] United States v. Trans-Missouri Freight Association. 166 US 290, 324 (1897), emphasis added.
[iv] Albrecht v. Herald Co., 390 US 145, 153 (1968).

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[v] Olympia Equipment Leasing Co. v. Western Union Telegraph Co., 797 F.2d 370, 377 (7th Cir. 1986), citing Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 US 585 (1985) (holding that *a monopolist has a duty to help a competitor*).
[vi] US v. Aluminum Co. of America, 148 F.2d 416, 431 (2d Cir. 1945).
[vii] "Statement by Bill Gates on the Findings of Fact," www.microsoft.com/presspass/ofnote/11-09wsj.asp, visited Nov. 11, 1999.

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