



October 10, 2001

SUPREME COURT DECLINES TO REVIEW MICROSOFT'S JUDICIAL BIAS ISSUE

(Microsoft Corporation v. United States)

The United States Supreme Court declined to hear Microsoft's appeal to have the entire antitrust case against it dismissed for judicial misconduct by the trial judge. The Washington Legal Foundation (WLF) had filed a brief with the Court last month urging it to hear the case because of the importance of the judicial bias issue. The U.S. Court of Appeals for the District of Columbia Circuit had recently remanded the case to a new trial judge, but only for the limited purpose of determining a new remedy. The court otherwise left intact virtually all of the original judge's Findings of Fact and Conclusions of Law.

Microsoft and WLF had argued that the court of appeals should have vacated the entire case because of the repeated and flagrant ethical violations by District Judge Thomas Penfield Jackson that called into question his impartiality in the case. The Justice Department and various States urged the High Court to deny review, arguing that the judicial misconduct issue was premature due to the ongoing proceedings in the district court. Thus, if the parties do not settle the case as urged by the new trial judge, Microsoft could again appeal the judicial misconduct issue to the Supreme Court along with the appeal of any remedial order the court may impose.

In its brief, WLF argued that the statements made by Judge Jackson more than warranted a complete reversal of the trial court's rulings, even if they constituted only an "appearance" of bias. But more importantly, WLF argued that if "actual" personal bias is required to justify a complete disqualification, there was certainly plenty evidence of that in this case.

WLF devotes substantial resources to promoting judicial and legal ethics. Over the years, WLF has filed numerous judicial misconduct complaints against federal and state judges, and has litigated other cases involving judicial ethics.

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