



For Immediate Release

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SUPREME COURT URGED TO TAKE UP MICROSOFT APPEAL ON JUDICIAL BIAS ISSUE (*Microsoft Corporation v. United States*)

The Washington Legal Foundation (WLF) filed a brief with the United States Supreme Court urging the Court to grant review of Microsoft's petition to have the entire antitrust case against it dismissed because of the original trial judge's misconduct. The U.S. Court of Appeals for the District of Columbia Circuit recently remanded the case to a new trial judge essentially for the purpose of determining a new remedy. The court otherwise left intact virtually all of the judge's Findings of Fact and Conclusions of Law.

WLF joins Microsoft in arguing that the court of appeals should have vacated the entire case because the repeated and flagrant ethical violations by District Judge Thomas Penfield Jackson called into question his impartiality in the case. It is not certain what effect the Justice Department's recent announcement that it will not seek a breakup of Microsoft will have on the High Court's decision to grant review. The Court is expected to act on the petition by the end of September.

Throughout the trial in *United States v. Microsoft*, Judge Jackson conducted numerous press interviews in his office about his views of the case and his personal opinions of Bill Gates and his company. He convinced reporters to agree to "embargo" his comments until after the trial was completed, although the case continued to be active both in his court, and subsequently on appeal. These secret interviews constituted clear violations of the Code of Conduct of United States Judges which prohibits judges from discussing pending cases.

In these interviews, Judge Jackson compared Microsoft officials to notorious drug dealers, declared that they were not entitled to due process, and made derogatory comments about Bill Gates. Judge Jackson told one reporter that he was preoccupied and obsessed with an early photograph of Bill Gates and his "shaggy-haired" employees. Judge Jackson said he saw in that picture a "smart-mouthed young kid" who "needs a little discipline." He told the reporter that Gates had a Napoleonic complex who never had any "leavening hard experience" or "reverses" in his life. He also said that he often told his fellow judges that Gates was wrong to have dropped out of Harvard.

"The court of appeals turned to a blind eye to Judge Jackson's bias-filled comments against Bill Gates and Microsoft that had nothing to do with the case," said Paul D. Kamenar, WLF's Senior Executive Counsel. "If accusing Bill Gates of having a Napoleonic complex, admitting of being obsessed with a photograph of a 'smart-mouthed young kid' who 'needs discipline,' and criticizing Gates for dropping out of Harvard, doesn't evidence personal bias, it is hard to imagine what would," Kamenar added. WLF argued in its brief that failure to order a full disqualification would erode the public's confidence in the integrity and impartiality of the judiciary.

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. WLF filed the brief on behalf of itself and the Allied Educational Foundation.

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