the tragic loss of this aircrew. In fact, I suspect they and their families will be all the more motivated to continue the ''war'' against drug trafficking. We should all take due notice of the costs associated with this effort, including the first loss of military lives. We should be unrelenting in our opposition to and our pursuit and prosecution of traffickers as well as pushers of dangerous drugs.

May God bless the memories of Specialist Cluff and his fellow crew members, and give comfort and peace to their families. And may we remember and continue to defend the principles for which these brave young people fought and died for. We owe that commitment to them, to their families, and to those who will continue their work.

MICROSOFT

Mr. GORTON. Mr. President, as we approach the August recess, my constituents at Microsoft face the task of battling the Department of Justice, DoJ, as well as their competitors in the courts, while continuing to run one of the most successful companies in one of the most competitive industries in American history. I would like to share some interesting developments that have arisen since I last took to the floor of the U.S. Senate to speak to this issue.

Specifically, USA Today recently reported that the Department of Justice is inquiring as to how a possible breakup of Microsoft could be implemented. According to USA Today, unnamed senior officials at DoJ have requested a complex study, which would cost hundreds of thousands of dollars, to assess where Microsoft's logical breakup points would be.

Mr. President, this seems to be putting the cart before the horse. I would hope that the Department of Justice has more important things on which to spend the taxpayers' money. If not, I am aware of several programs included in the Commerce, Justice, State Appropriations bill that could use additional funding.

To put the premature nature of this action in perspective, the findings of fact that summarize the points that each side made during the testimony aren't even due until next week. After Judge Penfield Jackson has had an opportunity to review these documents, the two sides will present closing arguments. Following the closing arguments, Judge Jackson will issue his ''proposed findings of fact.'' In response, the government and Microsoft will prepare another set of legal briefs to argue how antitrust law applies to the facts. Judge Jackson then will hear additional courtroom arguments, and finally issue his ''conclusions of law'' around November.

Should Judge Jackson rule against Microsoft, a verdict with which I would vehemently disagree, another set of hearings on possible ''remedies'' would need to be held. Those proceedings could last several weeks and involve additional witnesses, which would put a final decision off until sometime next spring. Microsoft almost certainly would appeal its case to U.S. Court of Appeals and possibly all the way to the Supreme Court—pushing the time frame out another two years.

Although the timing of this DoJ action is premature, the most intriguing aspect of the July 29, 1999 USA Today article was that the two investment banking firms approached by the DoJ to study the breakup of Microsoft declined the invitation. According to the story, both firms were ''worried about the impact of siding with a Justice Department that they say is viewed in the business community as interventionist.'' If Microsoft were a monopoly, and stifling growth in the Information Technology sector, it seems to me that these technology investment banks would have jumped at the chance to downsize Microsoft in order to open the market to competition, therefore increasing investment opportunities. This is obviously not the case.

Far from being guilty of the charges levied against it, Microsoft is actually winning cases brought by other firms charging anti-competitive behavior. Connecticut-based Bristol Technology Inc., which manufactures a software tool called Wind/U, filed a federal antitrust suit against Microsoft on August 18, 1998. Bristol accused Microsoft of ''refusing to deal'' because Microsoft wouldn't license the source code for Windows NT 4 under Bristol's proposed more favorable terms. Despite never having made more than $1.5 million in net profits in their best year, Bristol was seeking up to $270 million in monetary damages.

Not unlike the suit brought by the DoJ against Microsoft, the Bristol case seemed to be driven more by those trying to gain competitive advantage than by violation of antitrust law. Bristol hired a Public Relations firm to set out its ''David vs. Goliath'' PR campaign while supposedly negotiating in good faith with Microsoft. A member of Bristol's Board of Directors went so far as to send an email to the CEO and senior management discussing what Bristol was then referring to as the ''we-sue-Microsoft-for-money business plan,'' which he proposed might be funded by Microsoft competitors.

I see it as a disturbing trend to have litigation used as a get rich quick scheme instead of protecting ordinary citizens from harm. It is particularly disturbing that the United States government aids and abets this distortion of the American legal system. The insistence of the Department of Justice on continuing its case, in the face of overwhelming evidence that consumers have not been harmed, not to mention that the industry is booming, sets a poor precedent for Americans to follow and can only serve to encourage this behavior.

Fortunately, Bristol's hometown jury took less than two days to return a unanimous verdict. Every one of the antitrust charges were dismissed.

As gratifying as the jurors' commonsense decision was in the Bristol case, they did find against Microsoft on one count—and awarded Bristol one dollar in damages. Mr. President [pull out dollar bill?], I would suggest that the Bristol jurors got it exactly right. In fact, I think that's a pretty good precedent to follow in the DOJ case: assess Microsoft one dollar per indecorous email submitted by government lawyers as ''evidence'' and maybe the total will be a few hundred dollars or so. That wouldn't really give taxpayers much of a return on the estimated $30 to $60 million dollars this lawsuit has cost them, but no matter: what's a few million taxpayer dollars in the pursuit of that most critical of federal mandates, enforcing corporate etiquette?

Mr. President, I ask that an article from the August 5th *Investor's Business Daily* addressing this issue be printed in the CONGRESSIONAL RECORD after my remarks.

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

(See Exhibit 1.)

Mr. GORTON. Another interesting development that has arisen since my last speech is the controversy regarding instant messaging technology. Instant messaging, which allows people to chat in real-time with a select list of agreed-upon users, has become the hottest new on-line application. With over 100 million users, instant messaging shows how the Internet is changing the dynamic of the Information Technology industry.

Let me give you a brief description of the controversy. AOL, Microsoft, Prodigy, and Yahoo all have developed competing instant messaging technology. Unfortunately, users of these competing versions could not communicate with each other until Microsoft, Prodigy, and Yahoo released versions of this technology that allow their users to talk to AOL users. AOL responded by shutting out the competition and complaining that the competing technology was the equivalent of hacking into the AOL system. This is the equivalent of MCI and Sprint users not being able to place long distance calls to one another.

Over the last two weeks, AOL and Microsoft have been engaged in a duck and parry routine over the ability of competing technologies to access AOL users, with Microsoft creating new versions as fast as AOL could block them. I hope that the two sides can come to an agreement soon on the development of an industry standard which will allow for open competition in the marketplace.

With AOL having a 20–1 advantage over the nearest rival in the field, they must hope that Milton Friedman's admonition regarding the ''suicidal tendencies'' of some in the industry in supporting the DOJ's intervention doesn't prove prophetic. I hope that the Justice Department does not feel the

need to get involved. This industry, which is changing and advancing so rapidly, doesn't need the government to lay down speed bumps in the road. The federal government should be fostering growth and monitoring the progress, allowing the smooth flow of the traffic of commerce to continue unimpeded.

Mr. President, I ask unanimous consent to print a recent Wall Street Journal article in the RECORD that illustrates many of the points I have made regarding the absurdity of the DoJ's case against Microsoft. Once again, I implore my colleagues to join me in denouncing this folly.

There being no objection, the material ordered to be printed in the RECORD, as follows:

[From the Wall Street Journal, June 30, 1999]

(By Holman W. Jenkins Jr.)

The evidentiary phase of the Microsoft lawsuit wrapped up last week, and it's been an education. If Joel Klein were possessed of any public spirit at all, he would drop the case right now.

Yet there he was on Thursday, declaiming on the courthouse steps that Microsoft represents a ''serious, serious problem'' that only sweeping Justice Department remedies can fix. ''If you think that Microsoft's operating system monopoly is going to go away in two or three years,'' he added, ''then we shouldn't have brought this case. But I obviously don't believe that.''

That last bit is lawyer-speak meaning ''In the real world I don't believe what I'm saying, but in court I believe it.'' Mr. Klein doesn't want future clients to think he's a dim bulb.

He's got a problem. As a matter of law maybe, but certainly as a matter of doing what's right, the evidence and events outside the courtroom have clearly shown Microsoft's ''monopoly'' to be more semantic than real. This month Justice rolled out its latest ringer, an IBM manager who testified Microsoft threatened to withhold a Windows license unless IBM made all sorts of concessions not to promote products that compete with Microsoft's office applications, encyclopedia, etc.

Uh-huh. When all the palavering was done, IBM said ''no'' and got its Windows deal anyway, and a pretty good deal at that.

The same was true of the Apple, Intel and AOL witnesses earlier. That's why the government's case has been built entirely on the premise that Microsoft breaks the law merely by engaging in hard bargaining, never mind what bargains were reached or how events played out.

This might be a good time for Mr. Klein to remember that he works for us, not for Microsoft's competitors. They've been cheerleading for this lawsuit since day one, but they can't afford to mislead the markets the way Justice spins the public. The SEC frowns on CEOs who mislead investors.

Take Larry Ellison. He was on the Neil Cavuto show talking for the umpteenth time about Bill Gates the bullying monopolist. But he hastily drew a line: ''I mean he's never bullied Oracle. But I certainly . . .''

When Mr. Cavuto pressed on, suggesting that Oracle must be dead meat now that the ''bully'' has targeted its flagship database software, Mr. Ellison became indignant:

''Well, let's look at the facts. Right now, the fastest growing segment of my industry is the Internet. Of the 10 largest consumer Web sites, all 10 of them use the Oracle database. In the 10 largest business-to-business Web sites, nine of the 10 use Oracle. None of them use Microsoft. Every single web portal, things like Lycos, Excite, Yahoo!, all use Oracle. None use Microsoft. Microsoft's been in the database business for a decade and they continue to lose. They've been losing share to us at a faster and faster rate over the last several years. In fact, we dominate. We almost have Gates-like share in the Internet and it's the Internet that's driving the business.''

OK, Larry.

Moving along to Sun's Scott McNealy: His partnership with AOL and Netscape has figured prominently in court, with the government swearing a blue stream that their plans don't ''threaten'' Microsoft. That's not what Mr. McNealy told a trade publication, tele.com, in January. What follows is a lot of jargon, but it means Microsoft has a monopoly in nothing:

''We added in Netscape and AOL as distribution channels getting Java 2 into the tens of millions of disks that AOL sends out, so that the world is going to be littered with Java 2, just on the desktop. Then you add in what's going on in Personal Java and Java Card and Java on the server, and all of a sudden we have a very, very interesting, stable volume platform that gives any developer for the telco or ISP community a virus-free, object-oriented, smart card-to-supercomputer scalable, down-the-experience-curve platform that allows you to interoperate with every kind of device you can imagine.''

But nobody spins like AOL's Steve Case. In court, the story is that AOL was ''bullied'' into accepting a free browser from Microsoft (until then, AOL customers had to pay 40 bucks for a Netscape browser). It was ''bullied'' into accepting free placement on every Windows desktop.

These deals made AOL king of the Internet, dwarfing everybody including Microsoft. Now AOL has bought Netscape, but as Mr. Case will smirkingly tell you, it's up to him to decide when to dump Microsoft's browser and begin promoting Netscape's browser instead.

When will that happen? When he no longer cares whether Microsoft kicks him off the desktop (meaning when Microsoft can no longer hope to gain anything by kicking him off the desktop).

AOL has signed up to provide Internet access on the Palm, using a non-Microsoft operating system. Deals are in the works with various smart-phone makers, again bypassing Windows. Mr. Case has spun the court and gullible journalists by saying ''of course'' AOL has no intention of competing directly with Microsoft—which works if your understand of the industry is so skimpy that you believe the relevant threat is another PC operating system.

But, hark, AOL is going to compete on the desktop too. Last week we learned about talks with Microworkz to launch an AOL-branded computer, using BeOS and Linux (i.e., no Windows). Gateway is working on its own Internet computer using the Amiga operating system (yep, the same OS adopted by Commodore in the 1980s).

Faster than anyone predicted, the Windows universe is fragmenting. Microsoft built us a common platform by committing itself to a big, bulky, backwards-compatible Windows, and now it's stuck with a platform too big and bulky to be useful for a new generation of devices. These gadgets will run happily on any number of narrowly targeted, code-light operating systems, as long as they speak the common language of the Internet. Even Mr. McNealy predicts Windows will have less than 50% of the market by 2002—that is, in ''two or three years.''

This was in the cards before Justice ever filed its antitrust suit. We pointed out here three years ago that if ''the future of computing is a toaster tied to the Internet,'' the ''death struggle of the operating systems'' is over. We're happy to report that Microworkz is calling its non-Windows machine the ''iToaster.''

Pursuing this case any further would be nothing but a gratuitous favor to companies that don't want Microsoft to be allowed even to compete. It's time to pull the plug.

EXHIBIT 1

[From the Investor's Business Daily, August 5, 1999]

CASE CLOSED: LAY OFF MICROSOFT

(By Paul Rothstein)

The government's antitrust case against Microsoft continues at a snail's pace. A decision by a U.S. judge is not expected until late this year. In the meantime, eight average citizens in Bridgeport, Conn., have already offered their view in the contest of a lesser known but perhaps equally important antitrust case also involving Microsoft.

Bristol Technology is a small Connecticut-based software company that offers a product allowing users to run Windows-based applications in other operating system environments, including various flavors of Unix. Bristol sued Microsoft in federal court last year, asserting 12 claims for relief under state and federal antitrust laws and seeking as much a $263 million in damages.

Like the government, Bristol alleged Microsoft had an illegal monopoly in the PC operating system market. The suit claimed Microsoft had used it to try to monopolize two other markets—operating system software for ''technical workstations'' and for ''departmental servers.''

At trial, Microsoft presented a compelling case based on hard facts and evidence illustrating stiff competition from the likes of multibillion-dollar companies like IBM and Sun Microsystems. The competition historically has charged consumers much more than Microsoft does. Microsoft's entry in 1993 with Windows NT actually generated significant cost savings for consumers and increased the level of innovation and competition.

Bristol's hometown jury took less than two days to agree with Microsoft. In a unanimous verdict, the jury quickly dismissed every one of the antitrust charges. It upheld only a minor state claim for which the jury awarded Bristol $1 in ''damages.''

Although the specific facts are different, basic similarities exist between the Connecticut case and the government's antitrust suit in D.C.

In both cases, the plaintiffs argued that Microsoft possesses an illegal monopoly with its Windows operating system. Bristol claimed Microsoft's control of the operating system market was so strong and so permanent that any company wishing to produce applications that run on operating systems, must necessarily do Microsoft's bidding. The Justice Department charged that this alleged power was used to thwart competition from Netscape

In both cases, Microsoft showed that the volatile computer industry is not and cannot be dominated by a single player, even one whose product appears to enjoy widespread popularity.

Software is so easy to create that anyone with a home PC and a few hundred dollars can enter the market as a viable competitor to IMB, Sun Microsystems, Hewlett-Packard, Compaq and, yes, even Microsoft.

Just ask Linus Torvalds. He's the creator of the increasingly popular server operating system software called Linux. Torvalds created Linux in the early 1990s in his college dorm room at age 19. Today, the latest International Data Corp. data show Linux with

nearly 20% of the server software market and growing.

The Connecticut lawsuit couldn't show any harm to consumers or competition. The record supported Microsoft's position—that its efforts to provide Windows NT has increased choice, increased features and dramatically reduced prices for customers seeking to use high-end PCs and servers.

Fortunately for all of us, the jury in the Bristol case recognized that antitrust laws are designed to protect competition, not competitors.

It is unfortunate that the Department of Justice, joined by some state attorneys general, does not share that view. Indeed, another lesson from the Bristol case is that the selective and subjective use of out-of-context e-mail snippets, while perhaps good theater, does not prove an antitrust case.

Seen in this light, the Bristol jury's verdict ought to concern the government. Why? If the Bristol verdict illustrates anything, it's that eight everyday consumers can recognize the intense level of competition that exists in today's software industry and the obvious benefits of low prices and better products for consumers.

Given that reality, the government's long battle against America's most admired company is a waste of taxpayer money. It's a flawed proceeding for which consumers clearly have no use.

By issuing a verdict reaffirming the procompetitive and pro-consumer nature of today's software industry, the Connecticut jury signaled its support of continued innovation and free-market competition.

Paul Rothstein is a professor of law at Georgetown University and a consultant to Microsoft who has studied antitrust law under a U.S. Government Fulbright grant.

CRANBERRY AMENDMENT TO AGRICULTURE APPROPRIATIONS BILL

Mr. KOHL. Mr. President, I would like to clarify that during the passage of the Agriculture Appropriations bill last night, S. 1233, Senator GORDON SMITH's amendment on cranberry marketing was adopted without the proper co-sponsorship. Mr. SMITH's cranberry marketing amendment, begun by Senator WYDEN, was to be co-sponsored by Senator WYDEN and myself, as well as Senators FEINGOLD, KERRY, KENNEDY, and MURRAY.

Mr. WYDEN. I Thank Senator KOHL. I appreciate the clarification and all his hard work on this issue of importance to cranberry growers across the country. When we go to conference on this bill, I will continue to support this amendment.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT CONFERENCE REPORT

Mr. REED. Mr. President, I rise tonight to express my regret that I am unable to sign the conference repot on the Fiscal Year 2000 Department of Defense Authorization Act.

This was my first year as a member of the Armed Service Committee. I want to commend Chairman WARNER and Senator LEVIN for their leadership and commitment to our nation's defense. The committee provided ample opportunity for me to learn about the issues, participate in the discussion, and express my views. I believe that the process which created this bill was, overall, thoughtful and fair.

This bill has many excellent provisions. It provides for a significant increase in defense spending but allocates the funds wisely. In creases funds for research and development which we must invest in if we are to remain the world's finest fighting force. It adds additional funds to the service's operation and maintenance accounts which should ease the strain of keeping our bases and equipment in good condition. The bill also funds many of the Service Chief's unfunded requirements, items, that are not flashy but are vital to military readiness.

Certainly the most important parts of this bill are those that address the issue of recruitment and retention. This bill provides for a pay increase, restoration of retirement benefits, and special incentive pays. The bill also begins to address some of the problems identified in the military healthcare system. Our men and women in uniform work tirelessly every day to defend the principles of this country and they deserve the benefits that are included in this legislation.

I have grave concerns, however, over the sections of this bill which affect the Department of Energy. A reorganization of the agency which manages our nation's nuclear arsenal should not be undertaken quickly or haphazardly. Yet this conference report contains language which was not considered by any committee or debated on the floor of either the House or the Senate. The ramifications of these provisions are unclear. Regrettably, I am unable to support a report which contains such provisions until I have had the opportunity to study them further.

I hope that further analysis reveals that this reorganization is workable and that ultimately, I am able to vote in favor of this report. However, at this time, I am reserving my judgment and will not sign the conference report.

PET SAFETY AND PROTECTION ACT OF 1999

Mr. KENNEDY. Mr. President, I welcome this opportunity to express my strong support for the Pet Safety and Protection Act of 1999, which will protect pets from unscrupulous animal dealers seeking to sell them to labs for biomedical research.

Animals play a critical role in biomedical research, but we must do all we can to ensure that research involving animals is regulated responsibly. Animal dealers and research facilities must be certain that lost or stolen pets do not end up in a research laboratory.

This bill will guarantee that only legitimate dealers who can verify the origin of their animals will be authorized to sell to research facilities. The Pet Safety and Protection Act of 1999 reaffirms the nation's commitment to safe and responsible biomedical research, while maintaining high ethical standards in the treatment of animals.

ELECTRONIC COMMERCE EXTENSION ESTABLISHMENT ACT OF 1999

Mr. BINGAMAN. Mr. President, yesterday I was pleased to be joined by Senators ROCKEFELLER, SNOWE, and MIKULSKI in introducing the Electronic Commerce Extension Establishment Act of 1999. The purpose of the bill is simple—to ensure that small businesses in every corner of our nation fully participate in the electronic commerce revolution unfolding around us by helping them find and adopt the right e-commerce technology and techniques. It does this by authorizing an ''electronic commerce extension'' program at the National Institute of Standards and Technology modeled on NIST's existing, highly successful Manufacturing Extension Program.

Everywhere you look today, e-commerce is starting a revolution in American business. Precise e-commerce numbers are hard to come by, but by one estimate e-commerce sales in 1998 were $100 billion. If you add in the hardware, software, and services making those sales possible, the number rises to $300 billion. Another estimate has business to business e-commerce growing to $1.3 trillion by 2003. Whatever the exact numbers, an amazing change in our economy has begun.

But the shift to e-commerce is about more than new ways to sell things; it's about new ways to do things. It promises to transform how we do business and thereby boost productivity, the root of long term improvements in our standard of living. A recent Washington Post piece on Cisco Systems, a major supplier of Internet hardware, notes that Cisco saved $500 million last year by selling its products and buying its supplies online. Imagine the productivity and economic growth spurred when more firms get efficiencies like that. And that's the point of the bill, to make sure that small businesses get those benefits too.

Electronic commerce is a new use of information technology and the Ineternet. Many people suspect information technology is the major driver behind the productivity and economic growth we've been enjoying. The crucial verb here is ''use.'' It is the widespread use of a more productive technology that sustains accelerated productivity growth. It was steam engine, not its sales, that powered the industrial revolution.

Closer to today, in 1987, Nobel Prize winning economist Robert Solow quipped, ''We see the computer age everywhere but in the productivity statistics.'' Well, it looks like the computer has started to show up because more people are using them in more ways, like e-commerce. Information technology producers, companies like Cisco Systems who are, notably, some