

She's a riddle, this lady all the crooks have cussed is
 (Go Janet, go Janet, go Janet go!)
 This wild, crazy lady is the head of Justice
 (Go Janet, go Janet, go Janet go!)
 If you mess with her, she will mess with you
 She's the terror of Pennsylvania Avenue
 She's the middle-aged lady named Janet Reno.

—The Capitol Steps (www.capsteps.com), to the tune of "The Little Old Lady from Pasadena"

Team Reno

BY DAVID LYTEL

In Washington, D.C., if your car is still parked on Pennsylvania Avenue when the clock strikes 4 p.m., the enforcement of the law against overtime parking is swift and certain. No higher authorities need be consulted; the mayor's office is not involved. You can be sure that your car will be ticketed and towed. If you're an elected official in Washington, D.C., and you make fundraising telephone calls from your office, you could, until recently, be fairly sure the 19th century law making this illegal wouldn't be enforced.

But what if you're the richest man in the country, run the most powerful company in the computer industry, and you've successfully chased all your competitors out of your core market? Do you have to worry about the enforcement of a law created more than a hundred years ago to control mono-

polies in the whiskey, sugar, lead, beef and linseed oil markets?

Yes, apparently you do. But it's nothing personal. Really.

It's simply Team Reno in action. The worker bees within the Department of Justice may be putting in overtime to try to prove that Microsoft is unfairly using its supposed monopolistic powers to crush its competitors like bugs, but Queen Reno herself does not have to fight this battle. The question of whether Bill Gates can pull this annoying stinger out of his side comes down to whether a new team of anti-trust lawyers within the DoJ can put their theories to work.

Personal Attack?

Bill Gates may think (as some industry observers do) that Attorney General Janet Reno, the feisty head of the DoJ, is out to get him. It's a natural assumption. Microsoft as an institution is per-

sonified by Bill Gates and reflects his will. So Microsoft and most of the media project this cult of personality onto Microsoft's adversaries.

But while this image of strong personalities in conflict gives the story a "human angle," it is almost certainly wrong. From the Washington perspective, these are *institutions* in conflict, not people. Reno doesn't have to prove anything to anyone. It really isn't personal.

In fact, the personalities of the people involved have almost nothing to do with the conflict. Reno's name isn't even on the suit filed against Microsoft for violating the terms of its 1995 consent decree with the DoJ, nor does it have to be. If you're the nation's top law enforcement official, you certainly keep an eye on your underlings, but if they think the nation's 172nd largest company has broken the law, then you sit back and watch them haul

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the miscreants into court. It is as simple and straightforward as that, even though so many people would like to project intrigue and scandal onto it.

It is true that Reno is no shrinking violet and that Democrats are slightly more disposed to antitrust enforcement than Republicans. But Reno is the temporary face of a permanent institution that is more than 200 years old. The Department of Justice is able to attract attorneys and pay them half of what they could be making in the private sector because it rewards them with the feeling (said to be rare in the legal profession) that they are pursuing justice.

The real reason that antitrust enforcement is coming back into fashion again has little to do with personalities or with political parties. It is happening now because of improvements in the intellectual infrastructure supporting antitrust.

Antitrust in the '80s

In the 1980s, the so-called Chicago school of free-market economics came to dominance in the enforcement agencies, as well as in the judicial branch. To the Chicago school, there was no such thing as "leveraging." It held that lawful monopolies, such as intellectual property that could be essential to the operation of a market, could give a monopolist great advantage. But it said there was no way to extend this advantage into other areas. In essence, the Chicago school way of looking at it was to say that anywhere you could have a bottleneck, you could collect monopoly profits for the entire market. Therefore, it wouldn't be in the monopolist's interest to extend the bottleneck. There would be no further profits to be gained. It wouldn't matter if the bottleneck was 6 inches long or 6 feet long, there would be just one choke point.

But these Chicago school ideas were falling into disfavor in the economics profession just as they were gaining sway in the policy arena. Since that time, economists have started to realize that the world is a more compli-

cated place than is described in those simple models.

While the federal courts are still made up mostly of Reagan and Bush appointees who believe the Chicago school dogma, the dedicated professionals who now serve in the Department of Justice's Antitrust Division do not anymore. There is no persona-

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lity to photograph or interview, because the ideas are more important than the people. But that is what is really going on.

The Spread

This is one of those disputes in which the two sides see things so differently you almost wonder if they're both in the same fight. Microsoft sees itself as exercising legitimate market power, stemming from its strength as an innovator. But to Microsoft, this position is inherently unstable. In an industry as dynamic as the computer business, all sorts of forces could come along and pull the rug out from under it—ranging from the Java juggernaut to a new Internet-centered, browser-based software universe, or one in which most people connect to the Internet via machines that are not PCs. Besides,

Microsoft has proved that it is far from invincible. Witness the Microsoft Network fiasco-in-progress.

To Microsoft's critics, it is a case where a ruthless competitor must be stopped from leveraging its power to take over new markets, from the cable-television industry (see "Calling Bill's Bluff," page 96) to banking. Microsoft's power and influence were obtained mainly through strong-arm tactics, they say, and are now so overwhelming that only swift government action can slow the company down.

But when it comes to the current dispute between Team Reno and Team Gates, neither philosophical conclusion matters. To handicap the outcome of this case, the important thing to remember is that all the DoJ has to prove in court is that Microsoft violated the terms of a consent decree, a contract Microsoft signed with the government in 1995. There is no trial, and the government doesn't have to prove that Microsoft has achieved monopoly power. All it has to do is convince the judge that the company broke an agreement it made with an unforgiving party: the government.

So when your bookie calls, you can bet on the DoJ. It wouldn't be charging Microsoft with contempt if it wasn't able to prove a violation. Says one alumnus from the DoJ's Antitrust Division: "DoJ was going to sue Microsoft the first time, and after much protest got the consent decree it wanted. DoJ filed again when [Microsoft] tried to acquire Intuit. Microsoft screamed and said it would never settle, but about three weeks from trial, it dropped the merger. So twice the pattern has been for Microsoft to howl, and twice it has blinked."

The smart money here is on justice, and on Justice. ■

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