

had an interest in knowing whether Ms. Tripp had accurately acknowledged her arrest record."

Bernath, the junior partner in the enterprise, following orders, although blindly, was similarly unbowed, saying, "My actions were not only legal, but also ethical and correct."

Meanwhile, Tripp is suing both the Pentagon and the White House for Privacy Act violations and witness intimidation. This suit may in fact have been on Cohen's mind when he declined to take serious action against his guys. Cohen gave the game away somewhat on Meet the Press, saying of Bacon, "He is now the subject of a major lawsuit. And so he will continue to be held accountable to the legal process." This is exactly the sort of thinking that worries many observers, including Joseph diGenova, a former U.S. attorney with long experience in this area. Says diGenova, "The treatment of Bacon and Bernath suggests that the Privacy Act will be enforceable only in civil lawsuits filed by the victims. It there's no adverse action—not even a letter that goes into somebody's file—there's no deterrence here. None whatsoever." In other words, "Don't leave it solely to the victim, who has to pay lawyers and so on, to enforce her rights under the Privacy Act. The government should enforce those rights, especially given that it was government people who broke the law."

The president and his men have a bit of a history with the Privacy Act. You perhaps remember Passportgate. Toward the end of the 1992 presidential campaign, it was learned that political appointees in the Bush State Department had rifled through candidate Clinton's passport files and those of his mother. Democrats demanded an independent-counsel investigation. They got one—led by diGenova. One of the officials involved, Elizabeth Tamposi, was dismissed. The acting secretary of state, Lawrence Eagleburger, offered to resign over the matter (President Bush refused). Said Clinton, in his first press conference as president-elect, "If I catch anybody doing [what the passport-file offenders did], I will fire them the next day. You won't have to have an inquiry or rigmarole or anything else."

About a year later, Passportgate had something of a reprise, this time featuring appointees in Clinton's own State Department. A few of them got hold of Bush-administration personnel files and leaked them to Al Kamen of the Washington Post. Kamen thus had the following story: "Guess whose working file was empty? That of very controversial longtime Bush employee Jennifer Fitzgerald." Kamen, of course, was being coy here: Fitzgerald was the woman rumored to have had an affair with President Bush. Damsen was also able to report that Elizabeth Tamposi's file included "concerns from very senior State Department types that she was not ready for an assistant secretaryship."

Immediately, the State Department's inspector general, Sherman Funk, began an investigation. He found that two employees—Joseph Tarver and Mark Schulhof—were stone-cold guilty. Funk told Congress that the pair had engaged in "criminal violations of the Privacy Act provable beyond a reasonable doubt." The Justice Department (developing a pattern) refused to prosecute. In November 1993, the department secretary, Warren Christopher, fired Tarver and Schulhof. This must have been one of the last acts of Clinton-administration honor. The contrast with the Bacon-Tripp case—in this last respect—is overwhelming.

Then, of course, there was Filegate, in which the White House gathered unto its bosom hundreds of Republican FBI files, including Linda Tripp's. And the president himself was prompt to release letters from Kathleen Willey—a woman who had accused

him of improper sexual conduct—when it was convenient.

If all this didn't begin with Watergate, it was certainly enshrined there. When the Bacon-Tripp story first broke, Charles Colson reminded this magazine that it was to a Bacon-style disclosure that he had pleaded guilty, in 1974. He had released information from Daniel Ellsberg's FBI file to the Copley Press, at a time when Ellsberg was a defendant in the Pentagon Papers case and a thorn in the Nixon administration's side—the parallels to Tripp are neat. Colson went to jail for this. The special prosecutor, Leon Jaworski, rejoiced that Colson's plea had set a precedent: No longer would political appointees so readily smear their foes in this way. Indeed, the Privacy Act was a post-Watergate reform, intended to check Nixonian abuses.

Says diGenova, "The Bacon thing is a facial and obvious violation of the Privacy Act. It is made for it." Bear this in mind: "Linda Tripp was engaged in a very public dispute with the president." His presidency hung in the balance; he, like Nixon before him, was on the road to impeachment. "This is precisely the kind of circumstance that Congress had in mind when it gave us the Privacy Act. And not to punish this conduct is a very serious mistake."

Apart from Tripp's lonely lawsuit, this affair has now reached an end. Yet two questions hang over it. First, Who gave Jane Mayer that promising tidbit from Tripp's past? Mayer says that it was a former wife of Tripp's father. Others—not necessarily full-time conspiracy theorists, either—wonder whether that's the full story. Team Clinton had every reason to dig for dirt on Tripp. The chief recordkeeper in the White House, Terry Good, testified in a deposition that the White House counsel's office had requested "anything and everything that we might have in our files relating to Linda Tripp."

The second question is, Did Bacon act of his own initiative? Or was he prompted by someone—presumably at the White House—to let fly what appeared to be damaging information? Bacon has steadfastly claimed that he acted entirely on his own, with no order, wink, or nod. But this strikes most people familiar with the workings of the Pentagon—and of the Clinton camp generally—as implausible. A veteran Defense Department hand told us, "Couldn't happen, didn't happen, no way, no how. Remember: Everyone who comes into public affairs is told Privacy Act rules. You don't release someone's confidential information—to anyone, much less the media. This is Public Affairs 101. And Bacon is perpetrating a shameful lie. Any professional in the building will tell you the same thing."

So, the Clinton administration lurches to a close, its players going this way and that, its loose ends being tied up, however unsatisfactorily. Jane Mayer, the little lady who started this not-so-great war, was recently a guest at a White House state dinner. She was seated in a place of honor: the first lady's table. As for her friend Bacon, he has waxed philosophical about his humble-gate: "This is an extremely small part of a large and painful national drama."

Yes, but it is significant nonetheless. The rule of law has taken a beating in this administration, not to mention such demands as honesty and trustworthiness. After Cohen flaked out, one of Tripp's lawyers made a somewhat poignant statement: "Despite Linda Tripp's unpopularity, the law should protect her." Such a simple notion. And powerful, even now.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, for purposes of the statement I am about

to give, I ask unanimous consent that I be permitted to display a small safe.

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

MEDICARE LOCKBOX

Mr. VOINOVICH. Mr. President, according to the latest estimates put forth by the Congressional Budget Office, the United States is projected to achieve an on-budget surplus of \$26 billion in fiscal year 2000, the current fiscal year. What many Americans do not realize is that Medicare Part A, that portion of every person's paycheck that is deducted for hospital insurance, is the largest component of our Nation's on-budget surplus. It accounts for approximately \$22 billion of the \$26 billion fiscal year 2000 surplus. Of the on-budget surplus of \$26 billion, \$22 billion is actually money that has been paid into Medicare that is not being used for Medicare recipients today. It is overpayment.

Of that \$26 billion on-budget surplus, the fiscal year 2001 budget resolution assumed that \$14 billion of that on-budget surplus would be used to pay for military operations in Kosovo, natural disaster relief in the United States, Colombian drug eradication assistance, and other supplemental spending. Fourteen billion of the \$26 billion has been spoken for, and for all intents and purposes, it is off the table. It is gone.

That leaves approximately \$12 billion in on-budget surplus dollars available and unallocated—quite a tempting target.

If we don't use this \$12 billion to pay down the national debt, I am concerned Congress will just spend the money. However, there is another option. In the very near future, Senator ALLARD and I and several of our other colleagues will propose an amendment that will direct the remaining \$12 billion to be used for debt reduction instead of allowing it to be squandered on additional spending. We have given a lot of lipservice to being in favor of reducing the national debt. We have heard it in the House and the Senate. This will be a wonderful opportunity for everybody to vote to put \$12 billion of the on-budget surplus into debt reduction.

In addition, once the CBO releases its revised baseline this summer, we will come back again and propose another amendment that will allocate whatever additional fiscal year 2000 on-budget surplus dollars are achieved towards debt reduction. We know in July we will have new numbers so there will be more money. At that time, we will come back and say: Let us use that additional money to pay down the debt.

Ever since the Congressional Budget Office first projected we would have a budget surplus back in 1998, Congress and the administration have been falling all over themselves to spend our on-budget surplus dollars. Indeed, if we include the supplemental appropriations, fiscal year 2000 discretionary

spending will increase \$37 billion, or 6.4 percent, over fiscal year 1999. Again, when we use the \$14 billion of the on-budget surplus and add it to what we have already allocated for 2000, we are now talking about a 6.4-percent increase in spending in the year 2000 over 1999. That is tremendous growth in Government spending.

On another note, we hear that Vice President GORE now supports a Medicare lockbox, a lockbox similar to the one we created.

As I stated earlier, Medicare Part A is the largest component of our Nation's on-budget surplus, accounting for approximately \$22 billion. Because of our strong economy and high employment, more money has come into the Medicare program via the payroll tax than has been spent in benefits. Again, we are either going to spend those on-budget surplus dollars on unrelated Government spending, or we can use it to reduce the national debt.

Last November, Senator ASHCROFT introduced the Social Security and Medicare Safe Deposit Act to wall off both the Social Security and Medicare Part A trust fund surpluses; in essence, to put them in a lockbox so the only other purpose for which they could be used would be to pay down the national debt. That is what we were going to do with it. The Senate had a chance this year to vote on a Medicare lockbox on April 7, when Senators ASHCROFT, BROWNBACK, GRAMS, and I offered an amendment to the fiscal year 2001 budget resolution. Unfortunately, Senator ASHCROFT had only 2 minutes to speak on the subject. I didn't get a chance to speak on it at all because no one was very interested at that time.

I remind my colleagues, the vote on the Medicare lockbox amendment was opposed by 43 Members of this Senate on the opposite side of the aisle; that is, 43 Democratic Members of the Senate voted "no" on the Medicare lockbox amendment. I thought the Medicare lockbox was a good idea then; I think it is still a good idea. Now, apparently, the Vice President thinks it is a good idea.

We need to lockbox Medicare to make sure that the excess money paid into Medicare Part A goes for debt reduction and is not going to be used for more spending or tax cuts. We need to use it for debt reduction, period, just as all the experts have said. Alan Greenspan, Chairman of the Federal Reserve Board; Daniel Crippen, head of CBO; David Walker, head of the GAO—all have said we should take the on-budget surplus and use it to pay down debt. I am pleased the Vice President is on board with a Medicare lockbox. I hope he will be able to convince Senators on the other side of the aisle that we need to make sure the on-budget surplus funds coming into the Treasury, which are mostly Medicare Part A dollars, are used to pay down the debt.

If my colleagues on the other side agree with the Vice President that we need to lockbox the Medicare surplus,

which comprises \$22 billion of the on-budget surplus, then they should have no problem supporting using \$12 billion to pay down the debt.

We are going to have an opportunity twice this year—once perhaps this week on the Defense appropriations bill—to use the remaining on-budget surplus to reduce the national debt or to pay for more spending. I think it will be one of the best budget votes my colleagues will have all year long. Not only will it keep down spending, it will help bring down our publicly held debt. We have to make sure we make the right decisions in terms of our on-budget surplus.

I would like to also take advantage of this opportunity to quote the Vice President. This quotation was in the *Washington Post*:

The temptation has always been to treat Medicare the way Social Security used to be treated—as a source of money for spending or tax cuts. And now that we have succeeded in taking Social Security off budget and using it to pay down the debt, we need to do the same thing with Medicare and put it in a lockbox.

I remind my colleagues that when the issue of the Social Security lockbox came up on the floor of the Senate, our colleagues on the other side of the aisle, on six occasions, all 45 of them voted against—voted against—the Social Security lockbox. My feeling is that we will find out this year whether or not the administration is in favor of lockboxing Social Security and lockboxing Medicare.

I think it is time we level with the American people and let them know that the on-budget surplus we have been talking about is primarily made up of overpayment of Medicare Part A payroll taxes, and that what we have been doing is proposing to use that for more spending or for reducing taxes. Let's lock it up. Let's put it in a lockbox. Let's make sure that the money that is being paid into Medicare is money for insurance for the elderly and is not used for tax reductions or, in the alternative, used to pay for other Federal spending. Now is the time to make that point. Now is the time to be counted.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

(Mr. VOINOVICH assumed the chair.)

Mr. THOMAS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. THOMAS. Mr. President, I believe we have about 15 minutes left in morning business, is that correct?

The PRESIDING OFFICER. That is correct.

DECIDING THE SENATE'S PRIORITIES

Mr. THOMAS. Mr. President, I thank my friend from Ohio. I certainly could

not agree more that when we have—as we do and will—a surplus, we need to decide where our priorities are in terms of spending those dollars. I can tell you, if they are just left here, they will be spent. If our priorities do lie in funding what our programs are, in ensuring that Social Security maintains itself, and that Medicare is there, and when we want to ensure that we keep a balanced budget and start to pay down our debt, then we have to commit ourselves to do those things. I think it is an excellent idea for those dollars, so that they won't be spent for something else. I also think we ought to pay down the debt, and we hopefully will have some opportunity to get some tax relief. It is tougher, interestingly enough, when you have a surplus to make sure that the money is used as beneficially as when you are dealing with a deficit. That is what I wanted to talk about this morning.

That is how we might make Government more efficient. You know, we talk about that a lot. Most of us talk about less Federal Government and how do we make sure the dollars are spent as efficiently as they can be and, hopefully, how we can arrive at a situation where those people who earn the dollars can keep more of them. That ought to be part of our goal.

I think there are some things that this Congress ought to consider, and they seem very important to me—ways in which we intend to ensure that the Government is more efficient, that the Federal Government indeed is limited in size, and that we make certain the Federal Government does those things that are defined in the Constitution and not those other things that are not and should be left to the States and the people. That is what the Constitution says. That is what most of us want.

Particularly, I suppose, when you come from a State such as mine, Wyoming, where we have a relatively low population, where we have a lot of open space and not too many folks, then the way you have programs function is different than it is in Connecticut and different than it is in Pittsburgh. So you really need that flexibility and you need to be doing as much governance as can be done, in my opinion, as close to people as possible so that it fits. That is what we ought to be talking about—less bureaucracy and more responsiveness, and doing what we need to do. This budget process that we are going through now is quite important, not only with respect to spending the money, but we really define for ourselves what we think the priorities are in terms of the needs of the American people, and what the role of the Federal Government is to help satisfy those needs. It is difficult.

I think it is fair to say that governments have less discipline than the private sector. There is really nothing to force the Government to have to behave in different ways, which is true in the private sector. I come from a business background. I tell you, you have